

THE NEW

Natura Brevium

OF

The Most Reverend JUDGE,

Mr. ^{sr}Anthony Fitz-Herbert ;

Corrected and Revised.

Whereunto are added,

The Authorities in Law, and some other
CASES and NOTES collected by the
Translator out of the Year-Books and
Abridgments.

WITH

A New and Exact TABLE
of the most Material Things contained
therein.

L O N D O N,

Printed by the Assigns of Richard and Edward
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T H E
P R E F A C E

Composed by the Reverend Judge,
Mr. Anthony Fitz-Herbert.

IN every Art and Science there are certain Rules and Foundations to which a man ought to give Credit, and which he cannot deny.

In like manner there are divers Maxims and Fundamentals in the Knowledge of the Common Laws of the Land, which a man ought for to believe very necessary for those who will understand the same Law, especially at the beginning of their Studies : for upon those Fundamentals the whole Law doth depend. For which purpose in time past there was composed a very profitable Book call'd The Register, which doth contain sundry Principles, by which he must be well instructed who would study the Law. And also for that purpose was there composed by a Learned man a Book called Natura Brevium, which Book doth declare and set forth the Diversities and Natures of many Original Writs,

A 2

with

The Preface.

with their Proceſs ; which Book helped much to the understanding not only of the Register, but alſo of the Law of the Land. But becauſe of late time that Book hath been Tranſlated into the Engliſh Tongue, and many things are therein which are not according to the Law of the Land, and many other things are omitted which are very profitable and neceſſary for the understanding of the Law ; for that cauſe is this Work compoſed and publiſhed. Wherein if there be any thing againſt the Opinion of the Sages who have the Adminiſtration of the Laws, the requeſt of him who hath taken the pains to make this Treatiſe is, that they would coreect and amend the ſame, as they ſhall ſee good, according to the Law.

THE

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FITZ.

FITZ-HERBERT

HIS

Natura Brevium.

Writ of Right Patent.

A **T**HE natures of the Original Writs are to be shewed and declared, according to the manner and form as they are in order written and set down in the Register, which shall be expressed and specified in form following.

And first, because the *Writ of Right Patent* is in its nature the highest writ in Law, the nature of that Writ shall be first declared, and where it lieth.

B This Writ ought to be brought of Lands or Tenements, ^{40 E. 3. 8.} and not of Advowson, or of Common; and lieth only of an Estate in Fee simple, and not for him who hath a lesser Estate, as Tenant in Tail, Tenant in Frank-marriage or Tenant for life: for these Tenants shall not have a Writ of Right Patent.

C And this Writ lieth properly where a man is seised in Fee-simple, and another recovereth the Land against him by ^{11 Aff. 17.} Default in a *Præcipe quid reddat*: now he who hath lost by ^{per Curiam;} Default ought to sue this Writ. Or if a man seised in Fee-simple die seised of such Estate, and a Stranger doth abate and entreth into the Land, and deforceth the Heir; the Heir may sue this Writ against the Tenant of the Freehold of the same Land, or an Assise of Mortdauncester. ^{brought a Mortdauncester.}

E And this Writ ought to be brought against him who hath a Free-hold at least in the Land, and not against Tenants for years, Tenants by Statute-Merchant, Tenants by *Elegit*, nor Tenants by Statute-staple; but ought to be brought against those Tenants who have an Estate in Fee-simple in the Lands, or an Estate tail, or for term of life at the least.

F

And

Writ of Right Patent.

And this Writ is always Patent, and not Close, as other Writs are. And if the Lands be holden of other persons than of the King or of the Queen, then this Writ shall be directed unto the Lord himself, of whom the Lands or Tenements are so holden, if the Lord be not out of the Realm; for then it shall be directed unto the Lord's Bailly; and then the Chancellor of England ought to be certified thereof. And if a man be elected Bishop, and a Writ of Right Patent is to be used in the Court of the Manor of the said Bishop, the Writ shall be directed unto the Bailies of the Elect, and not unto the elect Bishop himself. And this Writ is as a Commission unto the Lord, or unto the Bailly of the Mannor, that they shall do Right. And the form of the Writ directed unto the Lord himself is such:

Henricus Dei gratiâ, &c. Henrico Comiti Lanc. salutem, G
Præcipim' tibi, quòd sine dilatione plenum rectum teneas A. de B. de uno mesuag, & xx. acris terr' cum pertin' in I. quæ clamat tenere de te per liberum Servitium unius denarii per ann', pro omni Servitio, quod W. de T. ei deforceat; & nisi feceris, Vic' Nottingham faciat, nè amplius inde clamorem audiamus pro defectu recti. Tesse, &c.

And if the Lord be out of the Realm, then the form of the Writ which shall be directed unto his Bailies shall be such:

Rex Ballivis H. Comitis Derb. Honor. de P. in Com. Derb. salutem. *Præcipimus vobis, quòd sine dilatione plenum rect' teneatis A. de B. de uno mesuag. & xx. acris terræ cum pertin. in I. quæ clamat tenere de dicto Dom. vestro per liberum Servit', faciend. festam ad Curiam præd. Domini vestri Honor. præd', in Comitatu præd', de tribus septimanis in tres septimanas, pro omni Servitio, &c. ut supra.*

And by that it appeareth, that in a Writ of Right Patent he must exprefs by what services the Lands are holden, &c. And if the Lands are holden of the King or of the Queen as of an Honour, or in Burgage, then the writ shall be directed unto the King's or Queens Bailies, and the Writ shall be such:

Henricus Dei gratiâ Rex, &c. Ballivis suis Lincoln' salutem. *Præcipimus vobis, quòd sine dilatione plenum rectum teneatis A. de B. de uno mesuagio cum pertinen' in Lincol', quod clamat tenere de nobis per liberum Servitium unius denarii per annum pro omni Servitio, quod W. de B. ei deforc', ne amplius inde clamorem audiamus pro defectu recti, &c.*

And if a man sue a Writ of Right Patent of Lands or Tenements which are holden by a Knights fee, then the form of

of the Writ shall be : *De uno mesuag. & x. acr. terre, &c. que clamat tenere dete per Servic' feod' unius Militis pro omni Servitio.*

L And the Writ of Right lieth of a passage over the water of *Thames*, and of pasture for 100 Sheep, and of the Rent of 1 l. of Ginger ; thus : *De uno mes. decem acris terre, novem solidat. redd', & passagio ultra aquam Tamisæ, & pastura ad cent. oves, cum pertin. in W. & de redditu unius libræ zinziberis, unius libræ canell. unius rosæ, unius paris calcarium deauratorum, & de tertia parte unius gardini, cum pertinen. in N. quæ clamat tenere de nobis per liberum Servitium, inveniend. nobis una cum participibus suis quinque naves ad transitum nostrum ad mandatum nostrum, pro omni Servitio, &c.*

A And if the Lands of any Lord be in the King for the Nonage of the Heir, and a Writ of Right isto be brought in the Court of the Mannor, where the King hath committed the Wardship of the Lands to another ; the Writ of Right shall be directed unto the Bailies of the Gardian to whom it is committed, or unto the Gardian himself, if he hath the Land in Ward in his own right, and by reason of the Seignory that the Heir is in his Ward. And the forms of the Writs in the Register are thus : *Rex Ball. custod. terræ & hered. A. de B. Or thus : Ballivis custod. terræ A. de B. And this Writ is where the Guardian hath only the Wardship of the Land, and not of the Heir, &c. And unto the Gardian himself the Writ is, Rex custod. terræ & hered. B. salutem. Præcipim. tibi &c. quod clamat tenere de prædict. her', &c. And if the Heir hath no Court for the poorness of the Land, that it is of so small value, then the Writ shall be directed unto the chief Lord, as Chief Lord, and not as a Gardian ; and then the Writ shall say, *Et quæ de ipso clamat tenere &c.* and shall not say as Gardian.*

And it appeareth that a man shall have a Writ of Right of a Knights Fee ; and the Writ shall be such :

B *Rex A. de B salut', &c. Præcipimus tibi, quod &c. W. &c. de Servitio unius feod. Militis cum pertin. in W. quod clamat tenere, &c. per Servitium unius paris calcarium deaurator', pro omni Servitio, &c. or per Servitium inveniend. hominem equitem vel peditem, ad eundem tecum in exercitu Walliæ, ad sumptum tuum & ad costum, &c. pro omni Servitio. Or thus : per liberum Servitium, portand. Brevia tua ad sumptum tuum & ad costum tuum infra Com', pro omni Servitio.*

C And there is an order set in the Register, when a man demandeth divers parcels of Land in his Writ which are of divers natures, which parcel shall be first specified in the

Writ of Right Patent.

Writ, and what parcel shall be next unto that, and then what parcel shall be next to that, and so of all the parcels; and that appeareth by the two verses following :

*suagium, um, lendinum, lombare, dinum, ra, tum, tura, cus, ra,
Mes toft mo co gar ter pra pas bos brue mora,
ria, cus, tum, caria, ditus*

8 A. T. 24. in
which Af-
66. (Bosnus)
was put be-
fore Pasture,
yer good, v.
7 E. 6.
Dicit 84.

Junca maris alne pis red sectare priora.

And if a man in his Writ will demand 20 Houses, and 10 acres of Land, and 10 acres of Meadow, and 10 acres of Pasture, and divers other parcels; and afterwards in the same Writ he will demand the moiety or the third part of one House, or of one acre of Land, or of Meadow, or of Pasture; then the form of the Writ is, to put in the beginning of the Writ the whole parcel, and in the end of the Writ the moiety, or the third part, &c. thus : *Quod plenum rectum, &c. de uno mesuagio, uno molendino, uno gardino, medietate unius mesuag. unius acre terre, cum pertinent, excepta 1. acra terre in N. &c.* so as the Exception shall always be in the end of the Demand.

And a Writ of Right may be brought against divers Tenants who hold their Lands severally; and then the form of the Writ is, *Rex A. B, &c. Precipimus tibi, quod, &c. plenum rectum teneas A. de xxx. acris terre cum pertinent. in N. quas clamat, &c. unde F. x. acr', & S. tres acras, & C. vij. acras ter. ei deforc'*. And so the word [Land] shall be in the end to him that shall be supposed last Deforceor, &c.

And if a Writ of Right be brought in the Court of any Bishop or Abbot, it shall be then directed to the same Bishop thus : *Rex, &c. venerabili in Christo Patri Gulielmo eadem gratia Archiepiscopo Cantuariensi, totius Angliæ Primati, salutur'. Mandamus vobis, quod sine dilatione, &c. quod clamat tenere de vobis per liberum Servitium, &c.*

And if it be directed unto an Abbot, then the Writ shall say, *quod clamat tenere de te. &c.*

And if in the time of the Vacation of any Bishoprick a Writ of Right shall be brought in the Court of any Lands which are of the Bishoprick, which are in the Kings hands by reason of the Vacation of the Bishoprick, then the Writ of Right shall be directed unto the King's Bailly, or unto the Bailly of him who is the Bishop elect; and the form of the Writ is such : *Rex ballivis Archiepiscopat. Ebor. de C. salut. Or thus : Rex Ballivis H. Lincoln. de H. salut'. Precipimus vobis, &c. quod clamat tenere de prædict. Archiepiscop'. Or thus, if it be directed unto the Bailies of the Bishop elect : quod clamat tenere de præd' Domino vestro per Servic', &c.*

Buc

Writ of Right Patent.

5

F But the Lord may give licence unto his Tenant to sue his Writ of Right in the King's Court, or the Common Pleas, before the Justices; and that as well after the Writ purchased and returned into the Common Pleas, as before the Writ purchased and sued. And the form of the Writ when it shall be sued in the Common Pleas by licence of the Lord shall be such: *Rex Vic', &c. Præcipe A. quod iuste, &c. redd. C. unum mesuag. cum pertin. in M. quod clamat esse jus & hereditatem suam, & nude querit. quod præd. A. ei injuste deforceat; & nisi fecerit, & prædict. C. fecerit te securum de clamore suo prosequenda tunc summ. per bonos Sum. prædict. A. quod sit coram iustic. nostris apud Westm. in quindena sanctæ Trinitat, ostens. quare non fecerit: & habeas ibi Sum', & hoc Breve. T. &c. quia I. capital. Dominus Feod. illius nobis inde remisit Cur. suam.* And so this clause shall be put in the Writ after the Teste, &c. And if this clause be omitted, and the Lord after the purchase of the Writ send his Letter to the King that he is Contented therewith, it is sufficient.

And if such clause, *quia Dominus remisit Cur. suam*, were in the Writ, it is not material whether there were any Letter of the Lord in the Chancery, proving his assent, or not. And the form of the Letter of Licence, which shall be certified unto the King, is thus:

[3]

A *Excellentissimo Principi Domino H. Dei gratiâ Regi Angl' Domino Hibern', & Duci Aquitanix, Dunelm. Episcopus salutem in eo per quem Reges regnant, & Principes dominantur. Quia, K. de S. in Curia vestra, coram Iustitiar. vestris de Banco, per Breve vestrum de Resto, W. de uno mesuagio cum pertin. in I. quod de nobis tenetur, nostrâ licentiâ mediante proponit implacit' vestræ Celsitudini Regiæ tenor. præf. intimamus nos nostram Cur. vobis inde hac vice remisisse, salvo nobis aliâs jure domini nostri in casu consimili, si acciderit. In cujus rei testimon' has literas nostras fieri fecimus Patentes. Dat' apud London', die, anno, &c.*

B But if the Tenant of any Lord sue such a Writ of Right in the King's Court without such Letter, and recover, it seemeth the Recovery is good, and the Lord shall not void the same nor the Tenant. Also it seemeth to stand with reason, that if a Man hold of any Lord, as of a Seignory in gross, which is not any Mannor, for which Seignory he cannot keep any Court; that then the Tenant ought to sue such Writ as before in the King's Court, and that the Lord shall not have Action or other means to annul this act, because he hath not any Court to hold Plea for that there. In the end of the Writ may be these words *Quia Dominus remisit Curiam, &c.*

F 3

B45

Writ of Right Patent.

But if the Tenant will sue forth the Writ of *Præcipe in Capite* in the King's Court for such Lands as are holden of another Lord, then the Lord shall have a writ out of the Chancery directed unto the Justices of the common Pleas, commanding them, that if it doth not appear unto them that the Lands are holden of the King, but of another, they shall proceed no farther on that Plea. For by this writ the Plea supposeth the Lands to be holden of the King, and therefore He and his Heirs shall be concluded against the King for the Tenure, and the same shall be prejudicial unto the Lord of whom the Lands are holden : But by the other writ he doth not suppose any Tenure in the Writ, and therefore there is great diversity. *Tamen quære.*

And if a man sue a Writ of Right directed unto the Lord of whom the Lands are holden, and he will not hold his Court to proceed upon the Writ ; then the Demandant in the Writ of Right shall have a Writ directed unto the Lord, commanding him to hold his Court, &c. and if he will not receive the Writ, nor do right unto him, he may sue fourth a Writ commanding him to do Right, and thereupon he may have an *Alias*, and a *Pluries*, and *Attachment*; and the form of the Writ of *Attachment* is such :

Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. quod sit, &c. ad respondend' tam nobis quam prefato A. quare cum eidem B. per Breve nostrum de Recto præcipimus, quod sine dilatione plenum rectum teneret pref. A. de uno mesuag. cum pertin' in N. quod T. ei deforceat ; idem B. Mandat' nostrum in hac parte parvi pendens, Breve nostrum prædict. in favorem prædict. T. malitiose suppressit. Or thus : prædict' Breve nostrum recipere, & Curiam suam tenere, & eidem A. in præmiss. justiciam facere recusavit, in nostri & Mandati nostri prædict. contempt' & ipsius A. grave damnum, ac exheredationis periculum manifestum : & habeas, &c. And upon that if the Defendant appear he shall be put to answer, &c.

But if the Lord of the Court hold his Court, but the Lord, or the Bailies, or officer will not do him right, or delay him to have right or to make Process, &c. then the Demandant may shew unto the Sheriff of the County how he is delayed, &c. and pray the Sheriff to award such a Precept or Writ which is called a *Tolt*, directed to his Bailies, by his Precept to remove the Plea before him into his County ; and upon that the Sheriff ought to award such a Precept to his Bailly, &c. and to go unto the Lord's Court, and there remove the matter before the Sheriff in his County. And the form of the Precept is such :

Robertus

Writ of Right Patent.

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Robertus A. Vicecomes Norf. Edmundo C. Bal. Domini Regis Ducat. sui Lancastr. de F. salutem Quia ex querela Joh. B. ad Com. meum, scilicet, die Lune proxim', &c. anno regni, &c. apud Norwic. en le Shire=house tentum, personaliter accedentis accepi, quod, licet ipse Breve Domini Regis de Recto patens, Ball. dicti Domini Regis Ducat. sui Lancastr. de F. in dicto Com. meo, direct', de eo, Quod ipsi plenum rectum tenerent dicto Joh. B. de maner. de F. cum pertin', quod Joh. S. de forceat, detulisset J. P. & J. C. Ball. dicti Domini Regis Ducat. predict' de F. predict' tamen pro eo quod dicti Ballivi favent dicto J. S. in ea parte, & plenum rectum secundum exigentiam ejusdem Brevis hucusque distuler. facer'; tibi ex parte Domini Regis precipio, firmiter injungens, quod in propria persona tua accedas ad Curiam Domini Regis Ducat. sui predict. de F. & Loquelam qua est ibidem int. praf. Joh. B. & Joh. S. per dictum Breve in Com. meo proxim tenend. tollas, & summonneas per bonos Sum. predict. Johannem S. quod sit ad Com. meum Norf. die Lune proxim. futur. apud N. en le Shire=house tenend', refato Johanni B. inde responsurus: & habeas ibi Loquelam predict', Sum, & hoc Præcept', Dat. in Com. meo apud N. en le Shire=house, die Lune proximo, &c. anno supradicto.

And by this it appeareth, that the Demandant may remove the matter out of the Lord's Court into the County Court: and it seems reasonable that the Tenant may also remove the matter by a Tolt made by the Sheriff, supposing that the Bailies of the Court do favour the Demandant in the matter, Tamen Quere, for the Rule in the Register is, that the Tenant may remove the Plea out of the Lord's Court for good Cause before the Justices in the Common Pleas; but the Demandant cannot so do, because he may have a Tolt from the Sheriff, to remove it out of the Lords Court into the County Court.

A And when it is in the County, he may remove it by a Recordare before the Justices in the Common Pleas. And by this Rule it seems, that the Tenant cannot remove the Plea by a Tolt out of the Lord's Court into the County, but he ought to remove it into the Common Pleas by a Recordare, &c. and that for good cause shewed in the Writ. And the Writ of Recordare is such: Rex Vic. &c. salut. Precipimus tibi, quod assumptis tecum quatuor. discret. & legal. Militibus de Comitatu tuo, in propria persona tua accedas ad Cur. A. de B. & in plena Cur. illa recordari fac. Loquelam qua est in eadem Curia per Breve nostrum de Recto, inter W. Petentem & S. Tenentem, de uno mesuag. cum pertin. in B. & Record. illud habeas coram Justiciariis nostris apud Westm. in xv sancti Mich. sub sigillo tuo, & sigill. quatuor legalium hominum ejus-

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dem Cur. qui Record. illi interfuerunt, & partibus eundem diem præfigas, quod tunc sint ibi, in Loquela illa prout justum fuerit processur' & habeas ibi nomina prædict. quatuor hominum, & hoc Breve. Teste, &c. And in the end of the Writ of Recordare, the cause of the removal shall be put in thus: Quia mesuag. prædict. T. Ballivo Cur' prædict', qui tenet Placita ejusdem Cur' tanquam consanguineo & proximo Hæredi prædict. W. descendere deberet post mortem ejusdem T. si idem W. sine hæred. de se obiisset, & idem W. illud versus præfat. T. in Cur. prædict. distraxisset, propter quod idem Ballivus favet ipsi W. in Loquela prædicta, ut dicitur; fiat Executio istius Brevis, si causa sit vera, & prædict. S. hoc petat, & aliter non.

And there are many other Cases put in the Register of B remover of this Plea into the Common Pleas at the Suit of the Tenant. As if the Lord take upon him for to maintain the matter, to have part of the Land. Or if the Tenant alledges Bastardy, or plead a Foreign Plea, or joyn the Mife upon the Grand Assise, &c. And when the Demandant hath removed the Plea by *Tolt* into the County, then the Demandant may remove the same into the Common Pleas by a *Pone*, without expressing any Cause in the *Pone*. But the Tenant cannot remove it, without a Cause be expressed in the *Pone*.

And it is a Rule, That a *Recordare* is not given to remove C any Plea in a Writ of Right, but for the Tenant. But *Pone* is given for the Defendant, but that ought to be out of the County Court. And the form of the *Pone* for the Demandant is such:

Rex Vic', &c. salutem. *Pone*, ad petitionem Petent', coram Justiciariis nostris apud Westm. in Octabis sanct. Trin. proxim. futur', Loquelam quæ est in Com. tuo per Breve nostr. de Recto inter A. Petent', & T. Tenent, de uno mesuag. cum pertin. in T. & summ. per bonos Summ. præd. T. quod tunc sit tibi, præf. A. inde responsur': & habeas ibi Sum', & hoc Breve.

And here is not said [and another Writ,] because the O. D original Writ of Right Patent doth remain with the Demandant, and not with the Sheriff, &c. as do other original Writs.

And if the Tenant will remove the Plea out of the County by *Pone*, he ought to shew some cause in the Writ; and the Writ is such: Rex Vic', &c. *Pone* coram Justic. nostris apud Westm. in xv. sanctæ Trin. proxim. futur', Loquelam quæ est in Com. tuo, &c. ut supra; & dic. præf. A. quod tunc sit ibi, Loquelam suam versus præd. T. inde prosecut', si voluerit:

v. 3. H. 4. 14.
12 H. 4. 13.
& 17.
1 H. 7. 30.
1 & 2 P. &
Ma. Dier
111.

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voluerit : & habeas ibi hoc Breve. Teste, &c. Quia pred. A. duxit in uxor. W. Consanguineam Vic', &c. propter quod idem Vic. farvet, &c. fiat Executio &c. ut supra.

And in a Writ of Right in a Court Baron, if a foreign Plea be pleaded, or the Mife is joynd to be tried by the Grand Assise, now if the Bailies will proceed, the Tenant may have a Prohibition directed unto them, which shall inhibit the Bailies to hold the Plea. Or he may inhibit the Lord himself, that he shall not hold the Plea, &c. And also such Writ shall be directed unto the Sheriff, forbidding him to hold Plea in the County Court upon the Writ of Right after such Pleas pleaded; and if they do proceed, he may sue forth an *Alias*, and a *Pluries*, and an *Attachment* against them.

And it is to know, that if the Lord or Bailies do cease to proceed in the Plea by reason of such Writ of Prohibition, then when the Justices in Eire come into the County for all Pleas, the Demandant may come into the Chancery by the Record of the Writ of Prohibition, which issued before out of the Chancery, which is always enrolled in the Chancery; and thereupon he shall have a Writ directed unto the Sheriff, to summon four Knights to chuse the Grand Assise upon the Writ of Right, which is in the Lord's Court or in the County. And the Writ of choosing the Grand Assise shall be such :

Rex Vic', &c. salut'. Summ. per bonos Summ. iiij. legales Milites de Com. tuo, quod sint coram Justic. nostris ad primam Ass. cum in partes illas venerint, ad eligend. super sacram. suum xij. de legal Militibus de visn. de N. qui melius sciant & velint dicere veritat', ad faciend. Recogn. magnæ Assis. nostræ, intr A. Petent. & B. Tenent', de uno mesuag. cum pertin. in N. unde idem B. qui tenens est, posuit se in magnam Assis. nostram, & petiit Recognitionem fieri, uter eorum majus jus habeat in mesuag. prædict': & summ. per bonos Summ. prædict. B. quod tunc sit ibi, auditurus illam election': & habeas ibi nomina prædict. Militum, & hoc Breve.

And when the Plea is in the Common Pleas, then this Writ of *Magna Assisa eligenda* shall issue out of the Common Pleas, and is Judicial: But in the case before, it shall issue out of the Chancery, without paying a Fine. And if the Demandant sue a Writ of *Præcipe in Capite* in the Common Pleas for Lands holden of another Lord than of the King, then the Lord of whom the Lands are holden may sue forth a Writ directed unto the Justices of the Common Pleas, rehearsing how that the Land is holden of him, commanding them to proceed no farther, &c.

†

And

Writ of Right Patent.

And as before is said, none can sue or maintain such Writ of Right Patent, but they who have an Estate in Fee-simple, as Tenant in Fee-simple, or Abbot, or Prior, or Bishop, or Master of an Hospital; and a Body politick, as Major and Commonalty, or Bailies and Commonalty, &c. and such Bodies politick may have such Writs for their possessions. But Parsons, Vicars, or Chantery Priests or Prebendaries, who have Patrons and Ordinaries over them cannot maintain this Writ of Right Patent, but another Writ which is called *Juris utrum*; the nature of which Writ shall be after expressed.

If a man bring a Writ of Right Patent as Heir unto his Auncestor, he ought to lay the Seisin and Esplees as in pernanacy of the Profits of the Lands in his Auncestors. And if an Abbot, Bishop, or such Body Politick, bring such Writ, he ought to lay the Seisin of the Esplees as in pernanacy of the Profits in themselves, or in their Predecessors. And for the residue of this matter touching the Writ of Right Patent, and the Count, and the Bars; and all the Circumstances thereof, see the title of *Droit* in the Abridgments.

And note, that a Writ of Right, which is called *Præcipe in Capite*, is no Writ of Right Patent, but is a Writ of Right Close, and shall be directed unto the Sheriff of the County, and lieth where the King's Tenant, who is seised in Fee-simple of Lands holden of the King in Chief as of his Crown, and not of the King as of any Honour, Castle, or Mannor, but meerly of the King as of his Crown, who is a Lord in gross, (because it is holden of him who is always King) is deforced, &c. And this Writ is as high in its nature as the Writ of Right Patent; and no person can sue this Writ, if he hath not an Estate in Fee-simple of his own possession and seisin, or of the seisin of his Auncestor or Predecessor.

And it lieth also where Tenant in Fee-simple of any Lands or Tenements, who holdeth such Land or Tenement of the King in Chief as of his Crown, and not of the King as of any Honour, Castle or Mannor, loseth his Lands or Tenements by default in a *Præcipe quod reddat*: Now he or his heir may have this writ of Right, of *Præcipe in Capite*, against the Tenant of the Freehold of those Lands or Tenements. And this Writ shall be Close, and shall be directed unto the Sheriff, and returnable in the Common Pleas before the Justices there: and in this Writ he ought to lay the Seisin in himself, or in his Auncestor or Predecessor,

Writ of Right Patent.

II

Predecessor, in the same form as he shall do in a writ of Right.

I *Rex Vic. Not', &c. Prac. A. quod juste, &c. redd. B. unum mesuag. cum pertin. in D. quod clam. esse jus & hereditat. suam, & tenere de nobis in capite, & unde queritur quod predict. A. ei injuste deforc', &c. Et nisi fec', & predict. B. fec. te secur. de clam. suo prosequend', tunc summi. per bonos Sum. predict. A. quod, &c.* Or thus, if an Abbot or other Spiritual persons sue the Writ; *Quod clam. esse jus Ecclesie sue Sancte Mariæ de N. & tenere de nobis in capite, & unde queritur, &c.*

K And by this Writ it fully appears, that Lands which are holden of the King as of an Honor, Castle or Mannor, are not holden in *Capite* of the King, because that the Writ of Right in such case shall be directed unto the Bailly of the Honor, or Castle, or Mannor, to do Right, &c. But when the Lands are holden of the King as of his Crown, they are not holden of any Mannor, Castle, or Honor, but merely of the King as King, and of the King's Crown as of a Seignory by it self in gross, and in Chief above all other Seignories. And thereof it followeth, that there are many Errors and erroneous Opinions at this day in the suing of Liveries, and finding of Offices, and determining which Lands shall be taken to be holden of the King in Chief, and which not; and therefore *Quare* to know the truth.

v. 21 E. 3. B Tenures, 16.
33 H. 8. 52
these are
some Honors
of which
Lands are
holden in
Capite.

L In *Præcipe in Capite* the Tenant shall not plead that the Tenements are not holden of the King, although the writ doth so suppose; but he ought to take the same by Protestation, and plead other matter in Barr, if he have any matter to plead.

38 E. 3. 13.
Br. Droit de
relto, 9.

M And in a Writ of Right he ought to count of his own Seisin, or of the Seisin of his Ancestor: and if he count of the Seisin of his Ancestor, he may alledge the Seisin in the time of King *Richard* the first, but the Seisin is not traverfable: But the Tenant may tender a demy mark to inquire of this Seisin, &c. And if it be found with the Tenant, that the Ancestor was not Seised, the Demandant shall be barred. But if the King be party Demandant, the Tenant cannot tender the demy mark to enquire of the Seisin, but ought to plead in Barr; and there the Tenant shall have no Imparlance without the assent of the King's Serjeants. And it seems reasonable, If the Tenant in a *Præcipe quod reddat* lose by Action tried, that yet he shall have a Writ of Right.

N And so if the Demandant be barred in an Assise of *Mortdauncester* brought by him, or other Real Action, as a

writ

Writ of Right in London.

[6.]

C. 5. par. 86.

If the Tenant after the Mife joyned maketh Default, final Judgment upon that

Default shall not be given, but a *Petit Cape* shall issue; for peradventure he may save his default: but Judgment final, where it ought not to be in a Writ of Right, shall bind until it be reversed.

Writ of Entry *sur Disseisin*, &c. or such Writ, and is barred by Action tried, yet he shall have a Writ of Right Patent, or *Præcipe in Capite*, if the Lands be holden of the King in chief: and so it seemeth, If a man lose by Default in a Writ of Right before the Mife joyned, yet he shall have a Writ of Right against him who recovereth. But after a Mife joyned it is otherwise, for then upon Default after issue joyned, the Judgment shall be final, as well against the Demandant by his Nonsuit, as against the Tenant if he make Default after,

And a man shall have a Writ of Right Patent of a Rent as well as of Land.

Writ of Right in London.

WRit of Right Patent in London lieth of Lands, or Tenements within the City, &c. by him who claims an Estate in Fee-simple in the Lands and Tenements, and not by him who claims an Estate for Life, or in Tail, or in Dower, or by the Courtesie. For if Tenant in Fee-simple loseth his Lands in London by Default, or by Verdict, it seemeth that he shall have a Writ of Right of those Lands directed unto the Mayor and Sheriffs, and it shall be in the nature as a Writ of Right Patent. And the form of the Writ is such:

Rex Majori & Vicecom. Lond. salut'. Præcipim. vobis, quod sine dilatione plenum rectum teneatis E. de N. de uno mesuag. & duobus shoppis cum pertin. in Lond', que clamat tenere de nobis per liberum Servic', &c. qua W. ei desorceat, ne amplius inde clamorem audiamus pro defectu recti. Teste, &c. And it shall not be said in this Writ, *Et nisi feceris, Vicecomes talis Com. faciet, &c.* because the Writ is as well unto the Sheriff of the said City as unto the Major.

And the Writ of Right Patent which shall be directed unto another City or Borough shall be of like form as the Writ aforesaid is, as appeareth by the Register, thus:

Rex Majori & Ballivis suis Oxon. salut'. Præcipimus vobis, quod sine dilatione plenum rectum, &c. E. de C. de viginti solid. redditus, & pastur. ac sexdecim boves cum pertin. in N. que A. de B. ei desorceat, &c.

And

And because that the Lands and Tenements within Cities and Boroughs are holden of the King in Burgage Tenure, it behoveth that the Writ of Right Patent be directed unto the said Major and Sheriffs, or Bailies, as Bailies and Officers of the King, as if Lands were holden of the King as of an Honor, or Castle, or Mannor.

And also upon a Writ of Right sued in London the Plea shall not be removed by *Tolt*, or *Pone*, or *Recordare*, as another Writ of Right sued in the Court of another Lord shall be. But if the Tenant in the Writ of Right in London vouch a Forreiner to Warranty, the Demandant shall come into the Chancery and shall sue a *Summ. ad warrantizandum* in the Comon Pleas before the Justices at a certain day, and another Writ unto the Major and Sheriffs, to send the Record before the said Justices at the same day, &c. and then the Major and Sheriffs do adjourn the parties before the Justices of the Common Pleas at a certain day, and also at the same day shall send the Record which is before them before the said Justices; and when the Justices have determined the Warranty, they shall send back the Record by Writ which shall issue out of the Rolls of the Justices, directed unto the Major and Sheriffs, commanding them to proceed in the Plea within the said City. And the same is by the Stat of Gloucester de Forins. vocat. ad *Warrantum*, cap. 12. And so shall it be done if the Tenant plead a Foreign Plea, the Plea shall be removed as aforesaid, and when the matter of the Plea is determined, then shall it be sent back unto the Major and Sheriffs as aforesaid by the equity of the said Statute.

And by the Rule in the Register, every *Præcipe quod reddat* of Plea of Lands or Tenements in London shall be directed unto the Major and Sheriffs jointly: But every other Writ shall be directed unto the Sheriffs only.

And now it is a common opinion, That if a man hath Title to have a *Formedon* of Lands or Tenements in London, or any other Action Real, as a Writ of *Entry sur Disseisin*, or other Writ whatsoever of Lands or Tenements, he ought to sue this Writ of Right Patent directed unto the Major and Sheriffs of London, that they shall do right, &c. and that the Demandant upon this Writ shall make his Protestation to sue it in the nature of what Writ he will as a man shall do upon a Writ of *Droit close* sued in Ancient demesne. But it seemeth the Law shall not be so; for this Writ is a Writ of Right Patent, which is directed unto the Major and Sheriffs, as other Writs directed unto another City

Writ of Right in London.

City or Borough are. And I have not heard that a man shall make protestation to sue such Writ Patent in the nature of what Writ he will. But the City of *London* by their Custom have power to hold Pleas of Lands within the City by other the Kings Writs as well as by writ of Right Patent, and that appeareth by the Register.

7 H. 6. 32.
ac. 37 H. 6.
27. But
Flow. 124.
Stanford,
contrary.

And it appeareth that *London* is not Ancient demesne, G for then the writ of Right which shall be directed unto the Major and Sheriffs should be Close, and not Patent. And it appeareth by the Register, in the title of *Juris utrum*, that a *Juris utrum* was sued of Tenements in *London* returnable before the Justice of the Common Pleas.

And also it appeareth in the Register, in the Title of Writs of Waste, in the end of the Title, that a Writ of *Partic. faci. nda* was directed unto the Major and Sheriffs of *London*, to make Partition of Tenements in *London*; and also there followeth a Writ of *Estrepement*, sued and directed unto the Sheriffs of *London*, upon a Writ of *Juris utrum* depending before the Justices of the Common Pleas of Tenements in *London*.

[7]

And it appeareth in the Register, a Writ of Justicies of A Dower sued in *London* for Lands in *London* was directed unto the Major and Sheriffs of the City, and a special Writ for the Heir in Tail for Lands in *London* directed unto the Major and Sheriffs there, upon a Devise made of the Lands unto his Ancestor in tail, &c. And the like writ for him in the Remainder in tail, and also for him in the Reversion. And the like Writs upon Devises made in other Cities and Boroughs by some persons to others, &c. And these Writs are in the Register after the Writ of *Formedon* in the Remainder, Fol. 244.

And by these Writs it appeareth, that a Writ of Right Patent, which is directed unto the Major and Sheriffs of *London*, is not such a Writ as a man shall declare thereupon in the nature of what Writ he will, &c. as it shall be upon a Writ of *Droit* Close sued in Ancient demesne; but that it behoveth to sue in *London* his Writ in the nature of such Writ as his Case requireth, &c. But *Quere veritatem* of that which was used in ancient times in *London*.

And it appeareth in the Register, that the King shall have B a Writ of Escheat returnable into the King's Bench, for Lands in *London* escheated unto the King; and by the same reason another man shall have a Writ of other nature, there returned in the Common Pleas. But the King hath a prerogative in this matter before others, to sue in what Court he

he will ; but he cannot alter or change the nature of the Writ, otherwise than the Law giveth the same to him and others, and therefore *Quere* of this matter.

There is also another Suit which lieth in a City or Borough for Lands or Tenements, by Usage and Custom of the City, and that is by Bill without any Writ out of the Chancery ; and the same is called a Bill of *Fresh force*, or an *Affise of Fresh force*, and lieth only where a man is disseised of his Lands or Tenements in any City or Borough, or deforced of any Lands or Tenements after the death of his Ancestor, or after the death of his Tenant for life, or in tail, or in Dower, or the like ; now within xl. days after the Title accrued unto him, he may sue this Bill of *Fresh force* and shall make protestation to sue in the nature of what Writ he will, as *Affise de Mortdauncestor*, or *Affise of Novel Desseisin*, or *Intrusion*, or of *Formedon*, or in the nature of any other Writ, as his Case doth require: But after the xl. days past after the Title accrued unto him, he ought to sue a Writ out of the Chancery, directed to the Mayor and Sheriffs of *London*, as the case lieth.

And also it appeareth by the ancient Treatise of *Natura Brevium*, that if a Foreiner sue an *Affise*, or other *Præcipe quod reddat* of Lands in *London* in the Common Pleas, &c. that the Mayor and Sheriffs, &c. may demand Conusance, &c. And therefore it seemeth, if they do not demand Conusance of the Plea, but suffer the Recovery to pass in the Common Pleas before the Justices, that then the Recovery is good in the Common Pleas for the Lands in *London*. And when the Mayors and Bailiffs shall demand Conusance of Pleas, and when not, and when they have surceased their times appeareth in the Title *Conusance*, in the Abridgments more at large ; and therefore see there.

Writ of Right of Dower.

THe Writ of Right of Dower is Patent, and shall be directed unto the Heir, to sue in the Court of the Heir as it appeareth by *Eritton*. And where the Writ is directed unto the Heir of the Husband, and the same Heir is seised of the Land whereof the Wife demandeth Dower, then if he will not assign Dower unto the Feme, the Feme who is Demandant may remove the same by a *Tolt* into the County, and also may remove the same out of the County into the Common Pleas by a *Pone*, &c. without shewing of any cause in the writ, as the Demandant shall do in a writ of
Right

Writ of Right of Dower.

Right Patent. But the Tenant in a Writ of Right Patent shall not remove the Plea out of the County into the Common Pleas, without shewing of cause in the *Pone*. And the Tenant in a Writ of Right Patent, or in a Writ of Right of Dower, may remove the Plea into the Common Pleas by a *Recordare* out of the Court of the Lord, upon cause shewed in the Writ. And what causes are sufficient and good to remove the Plea out of the Lord's Court, or out of the County, and what not, does appear in the Register; and therefore see the Causes there. But the Demandant cannot remove the Plea out of the Court of the Heir by a *Pone*, because he ought first to remove it by a *Tolt* into the County, and from the County he may remove it into the Common Pleas by a *Pone*, without shewing of cause in the Writ, as before is said.

And in a Writ of Right Patent the Plea may be removed at the Tenants suit by a *Recordare*, out of the Lord's Court, into the Common Pleas, before the Justices there: and by the same reason it seemeth that it may be removed at the suit of the Tenant, in a Writ of Right of Dower, out of the Heir's Court into the Common Pleas, before the Justices there, by *Recordare*, for good cause. But *Quare*:

And if the Husband do enfeof a stranger of all his Lands, and dieth, and his Heir hath nothing by descent; now if the Feme be to sue forth a writ of Right of Dower, it seemeth that she shall sue her Writ of Right of Dower directed unto the same Feoffee, &c. for after the Endowment the Feoffee shall be her Lord, and she shall hold this Dower of him by Fealty. But before the Statute de *Quia Emptores terrarum*. If the husband enfeof a Stranger of parcel of his Lands, &c. to hold of him, then if the Feme be to sue a Writ of Right of Dower against the Feoffee, the Writ shall be sued in the Heir's Court, and the Writ shall be directed unto the Heir, for the Seigniority that remaineth in him. A

And so if the Husband at this day giveth parcel of his Manor in tail to hold of him, and dieth, the Feme shall sue her Writ of Right of Dower in the Court of the Heir of her Husband against the Donee in tail, and the Writ shall be directed unto the Heir: But if the Husband make a Gift in tail of all the Land that he hath, and dieth, and the Feme is to sue a Writ of Right of Dower of that Land; then the Husband's Heir cannot have any Court, because he hath but a Seigniority in gross; and therefore it stands with reason that she should have her writ of Right of Dower against the Donee in tail directed unto the Sheriff, returnable in the

the Common Pleas, and she shall have this Clause in the Writ : *Quia B. capitalis Dominus Feodi illius, nobis inde remissit Curiam suam.*

B And so if the Husband make a Lease of all his Lands unto a stranger for life, and dieth, and the Feme is to bring a Writ of Right of Dower against the Lessee for life ; then it seemeth reasonable that the Feme have her Writ of Right of Dower against the Lessee for life in the Common Pleas, because that he in the Reversion hath not any Court. And although that this Clause, *viz. Quia B. capitalis Dominus, &c.* be put in the Writ, if the Lord have not any Court to hold, because it is a Seigniorie in gross, and not any Demesne Land to hold a Court, &c. then, although the Lord did never remit his Court, and that there is not any matter apparent or remaining in the Chancery, to prove the Lord's will and assent to remit his Court, yet the Writ returned into the Common Pleas, before the Justices there, is good; and they shall proceed thereupon, if the Lord hath not any Court to hold Plea for this matter. And it seemeth that the Lord shall not have his Action against the Demandant for suing the Writ in the Common Pleas, if he hath no Court to hold Plea thereupon, and to do right unto the party. But if the Lord hath a Court to hold Plea, then he may have a Prohibition to the Justices of the Common Pleas, that they do not proceed upon the Plea, otherwise not. *Quere* of this matter.

C And this Writ of Right of Dower lieth where a Feme is endowed of parcel of her Dower; and she would demand the residue against the same Tenant, and in the same Town, then she ought to shew this Writ of Right of Dower; for the words of the other writ will not serve. *viz. unde nihil habet*, because that she hath received part of her Dower; and therefore of necessity it behoveth her to sue this Writ of Right of Dower, to recover the residue: and the Writ shall be directed unto the Heir, or unto his Gardian, if he be in Ward, as a Writ of Right Patent shall be, &c.

D And if a Feme lose her Land which she holdeth in Dower by Default in a *Præcipe quod reddat*; yet, according to the opinion of some men, she shall have a Writ of Right of Dower. But it seemeth, by the Equity of the Statute of *West. 2. cap. 4.* that if a Feme lose by default the Land whereof she hath had Dower, that by that Statute she shall have a *Quod ei desorceat* to recover the Land; and before that Statute she had no remedy for to recover the Land, but only an Action of *Disceit*, if she were not summoned in this Writ of Right of Dower.

G

And

Writ of Right de rationabili parte.

And if a Feme hath Dower, and lose the same by Assise ^E or Action tried, it seemeth she hath not any remedy but only by Attaint; for it seemeth that she shall not have remedy to recover by a Writ of Right of Dower, because she had the Land once assigned unto her in Dower, and she was in possession of the same, so that the Title was executed, and she ought to sue an Action of her own possession, if she be afterwards deforced. *Tamen Quere.* And after the Plea removed unto the Common Pleas, the Process is then *Grand Cape & Petit Cape.* And in the Heir's Court the manner is to make a Precept in the nature of Summons, and of *Grand Cape and Petit Cape*, and the Writ directed unto the Heir is such:

Rex A. salutem. Precipim. tibi, quod sine dilatione plenum rectum teneas B. quæ fuit uxor C. de tertia parte decem acr. terr. cum pertinen. in W. quam clamat tenere de te in dote, per liberum Servic. tertiæ partis unius denarii per annum pro omni Servic', quam C. ei deforceat &c. ^G

And also a Feme may have a Writ of Right of Dower of the moiety, according to the usage of *Gavelkind*, where she hath received part, and is deforced of part. And also it appeareth by the Register, that the Feme shall have a Writ of Right of Dower directed unto the Heir himself, where he himself deforceth her of the profits of an Office: and the Writ is such:

Rex A. salutem. Precipimus tibi, quod plenum rectum teneas K A. & R. uxor. ejus, de tertia parte exituum provenient. de custodia Gaolæ Abbatiæ Westm. & de tertia parte trium rodarum terræ, unius rodæ prati, et redditus tot panum, et tot lagenarum cervis. vel tot ferculorum per diem, vel per septimanam vel per annum, cum pertinen. in Vill. Westm. quas clamat pertinere ad liber. Tenementum suum, quod tenet in dote ipsius R. in ead. Vill', et tenere de te per liber. Servic', inveniend. tibi tertiam partem custod. pro custodia Gaol. prædict', et portæ ejusdem Abbatiæ, pro omni Servic', qu. tu ipse eis deforc', &c. ^K

[9.]

And by this it appeareth, that a Feme shall have a Writ of Right of Dower of that thing which is appendant or appurtenant unto the Land which she holdeth in Dower, &c. if she be deforced thereof.

Writ of Right de rationabili parte.

A Writ of Right *de rationabili parte* always lieth betwixt ^B Privies in blood, as betwixt Brothers in *Gavelkind*, or betwixt Sisters and other Coparceners, as Nephews and Nieces,

Neece, and lieth for Lands in Fee-simple : As if the Auncestor lease his Lands for term of life, and dieth, and hath issue two Daughters, and afterwards the Tenant for life dieth, and one Daughter entreth into the whole Land, and deforceth her Sister of the Land ; her Sister shall have this Writ of Right *de Rationabili parte* : and so if the Auncestor were disseised of Lands, and dieth, and one Sister entreth into the Land, and deforceth her Sister thereof ; the Sister who is deforced shall have this Writ against her other Sister. And so two or three may sue this Writ against the fourth Sister, or the Aunt and the Neece may sue this Writ against that Sister which deforceth her of her part, &c. And this Writ lieth as well upon a dying seised of the Auncestor, if D one Sister enter upon all, and deforce the other Sisters, as E where the Ancestor doth not die seised : and the Writ is a F Writ of Right Patent, and shall be directed unto the Lord of whom the Lands are holden, as other Writs of Right G Patent shall be, and shall be removed by Tolt and other Writs, as the Common Writ of Right shall be. But Grand Assise, nor Battail shall be joyned in this Writ, for the privacy of the blood that is betwixt them. Neither shall this Writ be sued against a stranger, and if it be it shall abate. And if the Ancestor die seised, and one Sister entreth into all the Land, and forceth her Sisters, the others may sue this Writ of Right *de rationabili parte*, or a Writ of *Nuper obiit*, at their election. And so it is for Lands in Gavelkind ; if one Brother entreth into all the Lands, and deforceth his Brethren, they may sue this Writ of Right *de rationabili parte*, or a *Nuper obiit*, if the Ancestor die seised : but if the Ancestor doth not die seised, then they ought to sue this Writ *De resto de rationabili parte*. But against a Stranger, it behoveth to sue *Assise de Mortdauncestre*, upon the death of their Ancestor, or other Writ (as their Case shall require) of the Seisin of their Ancestor. And the form of the writ of Right *de rationabili parte* is such.

H Rex A.B. salutem. Præcipim. tibi, quod sine dilacione plenum redditum teneas W. F. de decem acris terræ cum pertin. in B. quas clamat esse rationabilem partem suam; quæ eam contingit de libero tenemento quod fuit I. patris, vel matris, avunculi, vel amicæ, consanguinei sui, in ead. villa, et tenere de te per liberum Servic. tertie partis, vel quart. partis unius denarii per annum pro omni Servizio, quas B. et S. ei deforceant.

And by the Register in this writ a man may see what Rent and Services all the Land which is partible betwixt the Sisters shall yield and pay unto the chief Lord, and accord-

Writ of Right de rationabili parte.

ingly put every one of the Heirs to her part. So if there be one Demandant, and two Deforceants, then thus : *Quod clamat tenere de te per liberum Servitium tertiae partis tanti per annum.* And if there be two Demandants, and two Deforceants, then thus : *Quod clamat tenere de te per liberum Servitium medietatis.* Or, *duarum partium tanti per ann. pro omni Servitio.* And if the Land be holden by 4 d. per annum and Fealty, and there are two Demandants, and two Deforceants, then the Writ may be : *Quod clamat tenere de te per liberum Servitium duorum denar. per ann. pro omni Servitio,* &c.

And if there be two Sisters, and after the death of the I Ancestor they enter and occupy in common as Coparceners, and one of them deforce the other Sister to occupy that which is appendant or appurtenant to the Tenement which they have in Coparcenary ; then she who is deforced shall have a Writ of Right *de rationabili parte*, against her Sister, of that which is so appendant or appurtenant, and the Writ for that shall be such : *Quod clamat pertinere ad liberum Tenementum suum quod de te tenet in eadem villa, & tenere debet de te per liber. Servitium. tanti pro omni Servitio. quod W.* &c. And in this writ he shall make his demand of a cer- K tain portion of Land, as to so much as his Plea doth amount unto, to hold in severalty : as if the Ancestor die seised of twenty acres, and hath two Daughters, and one entrench into the whole, and deforceth her Sister ; the other Sister shall demand by her Writ, ten acres of the twenty acres, because that such is her part ; and by this Writ if she L recover, she shall have Judgment to recover ten acres, to hold in severalty, as her part doth amount unto.

And this Writ of Right *de rationabili parte* ought to be M brought against all the Coparceners that hold the Land, &c. and by all those that are deforced of the Land, as it appeareth by Britton : and Voucher and View do not lie in this N Writ, because of the privity of blood ; but in a *rationabili parte* the View was granted H. 15 H. 5. because that the Ancestor did not die seised, &c. And Nontenure is no Plea in this Writ by Britton, &c. And the Process in this writ, after it is removed into the Common Pleas, is *Sum. Grand Cape & Petit Cape* ; and in the Lords Court the manner is to make Process in the nature of *Grand Cape & Petit Cape*, &c.

[10.] And the Heir of one Coparcener may sue this Writ of Right *de rationabili parte* of the Seisin of the common An- P cestor, which was of the Seisin of his Ancestor in the time of King R. 1. or H. 3. or of the Seisin in the time of King John, or other Kings after that time, if he can prove it. As a man shall

A shall have a Writ of Right Patent of the Seisin of his Ancestors in such times, &c. But if one Coparcener claim the Land by a Feoffment made unto her by her Ancestor in fee, now if the other Coparcener deforce her of the Lands, she may have a Writ of Right Patent against her Sister for the Land, and shall joyn the Mife by Grand Assise, or by Battail, because she doth not there claim the Land as Heir to her Ancestor, as it seemeth : *Tamen Quare.*

Com. 306.
no Battail lieth
berwixt
them.

B And if a man hath issue two Daughters, and dieth seised of Lands in tail, and one Daughter entreth into the whole, and deforceth her Sister ; there the Sister may have a *Formedon* against the other Sister, and not a *Nuper obiit*, nor this Writ of Right *de rationabili parte*, for this Writ lieth properly for the Lands in Fee-simple.

Writ of Ne injuste vexes.

C WRIT of *Ne injuste vexes* lieth in case where Lord and Tenant are, and the Tenant hath holden of the Lord and his Ancestors by Fealty, and 20 s. rent yearly, and of late time the Lord hath gotten Seisin of greater and more Rent of the Tenant, by payment of the Tenant of his own agreement without coercion of Distress: Now if the Lord will distrain the Tenant for this surplussage of Rent, the Tenant cannot avoid the Lord in an Avowry, for the Seisin which the Lord hath had by the payment of the Tenant of this Rent of his own agreement. But the Tenant may sue this Writ of *Ne injuste vexes* directed unto the Lord; which Writ is in it self a Prohibition unto the Lord, that he do not distrain his Tenant to do other Services than of right he ought to do. And this Writ in its nature is a Writ of Right, and shall be Patent ; and this clause, *Et nisi feceris, Vicecomes, &c.* shall be put into the Writ. And the Process in this Writ is, *Prohibition, Attachment, and Distress* against the Lord, commanding him that he shall not distrain, &c. And this Writ is founded upon the Statute of *Magna Charta cap. 10* which willeth, *Quod null. distring. ad faciend. majus Servic. de Feodo Militis, nec de alio libero Tenemento, quam inde debetur.* And the form of the Writ is such :

C.4. part 11.
Bevils Case.

F Rex A. Salutem. Præcipimus tibi, Ne injuste vexes vel vexari permittas B. de libero Tenemento suo, quod de te tenet in I. nec inde ab eo exigas, vel exigi permittas Consuetud. vel Servitia quæ inde facere non debet, nec solet: & nisi feceris, Vic. Lincoln. idem fieri faciet, ne amplius inde clamorem audiamus pro defellu recti.

Writ De Recto clauso.

And this Writ is always Ancestrel, viz. where the Tenant and his Ancestors have holden of the Lord and his Ancestors by Fealty and 20 shillings Rent, or other Rent and Service; and of later time the Lord hath encroached divers other Services or Rents, by payment of the Tenant, or doing of other Services which he ought not to do unto the Lord; then the Tenant may sue this VVrit: for by encroachment of Rent by the Lord by payment of the Tenant, the Tenant shall not avoid the same in an Avowry by the Lord for that rent which is so encroached. But if the Lord do encroach other Services which the Tenant of right ought not to do unto him, as Homage or Efcuage; then the Tenant may avoid this encroachment in Avowry by the Lord for these Services, because the Tenant may traverse the manner of the Tenure in that Case, as to say, that he holdeth of the Lord by Fealty and 20 s. rent only, without that he holdeth by Homage, Fealty and Rent, in manner and form as the Avowry is made: Or the Tenant may sue this VVrit of *Ne injuste vexet* in that case if he will. And if the Lord do distrain to do other Services after the Prohibition delivered unto him, or to pay more Rent than of right he ought to pay, then the Tenant shall have an Attachment against the Lord returnable in the Common Pleas, or in the King's Bench. And when the Lord cometh upon the Attachment, then the Tenant shall count against him in this manner.

B sheweth unto you, That whereas he holdeth of the aforesaid A, &c. as of his Mannor of C. 20 Acres of Land with the appurtenances in W. by Homage, Fealty, and by the Service of the twentieth part of a Knights Fee, and by the Services to render to the said A. half a pound of Pepper yearly at the Feast of *All-Saints*, for all manner of Services; yet the aforesaid A. over the Services aforesaid, vexeth the said B. and suffereth him to be vexed, and of him demandeth and distraineth, and suffereth him to be distrained for 9 s. *per ann.* of Rent, for which he is damnified unto his damage of 20 l. And so note, that he shall declare of damages in this VVrit; and then upon this Count, the Lord who is defendant shall make his defence and shall defend the wrong and force &c. and shall count against the Plaintiff, and shall say that he doth not torciously demand the said Rent of 9 s. over the other Services, &c. for he shall say that the said B. holdeth the said 20 Acres of Land, &c. of him by the said Rent and Services, &c. and that he the said A. was seised as well of the said Rents of 9 s. as of all the other Services aforesaid

But otherwise in Assise of Rent, or in a Writ of Rescous, or Cessavit; for the Tenure is traversable in these Writs.
12 E. 4. 7.
22 Ass. 68.
This pe.

10 H. 7. 11.
26 H. 8. 6.
Com. 45.
& 94.

aforesaid, by the hands of the aforesaid B. as by the hand of his very Tenant for the said 20 Acres of Lands with the appurtenances, as of fee and of right in time of Peace, viz. in the time of King Edward late King of England, &c. in taking of the Esplees, viz. Rents, &c. And that such is his right, he is ready to make good by his Body, &c.

[11]

- A And thereupon he who is Plaintiff in the *Ne injuste vexes* shall defend this Count, and thereof shall put himself upon the Grand Assise, and so the Mise shall be joyned betwixt them in this Writ, which is at first but a Prohibition &c.
- B And Judgment final shall be given upon this Writ after the Mise joyned, if it pass against any of the Parties; or if any of them be Nonsuit, or make Default after the Mise joyned. And see the form of the Count, and of the Defence in this Writ in the Book of *Entries of Pleas*, f. 90. on the first page.
- C And it appeareth M. 18. E. 2. that the Feoffee shall not avoid Seisin of Rent had by encroachment of his Feoffor, nor shall he have a Writ of *Ne injuste vexes*; nor a man shall not have a Writ of *Ne injuste vexes* against the Grantee of the Seigniori, as appeareth P. 10. E. 3. 14 H. 4. 5. ac. by Thiering and after 163.
- D And Trin. 20. E. 3. it appeareth that Tenant in tail shall not have *Ne injuste vexes*, &c. but he shall plead, and shew the matter, and shall not be stopped by the payment and Seisin had by the hands of his Ancestors; but by a Seisin had by his own hands he shall be bound during his time in Avowry, as it seemeth. But after the Mise joyned in a Writ of *Ne injuste vexes* sued, if the parties imparle until another term and day, and after at this term at the day the Lord who is the Defendant in the *Ne injuste vexes* make Default, now what Process shall be awarded thereupon, or if Judgment shall be given upon this Default without any Process, *Quare*. And so if the Plaintiff at another Term after the Mise joyned and day given, &c. make Default, it seemeth he shall be Nonsuit, &c.
- E

Writ De Recto clauso.

- F **W**Rit of *Droit close* is a Writ which is directed unto the Lord of Ancient demesne, and lieth for those Tenants within Ancient demesne, who held their Lands and Tenements by Charter in Fee-simple, or in Fee-tail, or for Life, or in Dower; if any of them be ousted of his Lands or Tenements, or Disseised &c. he or his Heir may sue this writ of *Droit close* directed unto the Lord of Ancient demesne, commanding him to do right, &c. in his Court; and the form of the Writ is such:

Writ De Recto clauso.

Henricus Dei gratia, &c. Ballivis suis de I. salutem. Præcipimus G vobis, quod sine dilatione, & secundum Consuetud. Manerii nostri de I. plenum rectum teneatis A. de uno mesuagio cum pertin. in I. quod B. ei desorc', ne amplius inde clamorem audiamus pro defectu recti. Tesse, &c. And another Writ thus :

Rex Ballivis suis Castri de Bamburg. salutem. Præcipimus, &c. quod, &c. secundum Consuetud. Manerii Castri de Bamburg. plenum rectum teneatis de duabus partibus piscarie aque de I. in Bamburg. quas B. ei desorc', &c. And the order of putting H the parcels of Houses, Lands, Meadows and Pasture, &c. shall be observed and used as shall be done in a Writ of Right Patent. And this Writ may be sued of Common of I Pasture, and for stopping of a Way, and such like. And the Writ for the Common is such :

Rex &c. Præcipimus tibi, quod plenum rectum teneas, &c. de K Comm. pasturæ in T. quæ pertinet ad unum mesuag', & x. acr. terræ, quæ secund. Consuetud. Manerii præd. tenet in eadem villa, quas B. C. & D. ei desorc'. And for stoppings of a Way the Writ is such :

Rex Ball. Episcopi Covent. & Litch. de Maner. de C. salutem L Questus est nobis R. quod W. injuste & sine iudicio obstruxit quandam Viam in D. quæ est infra præcinctum ejusdem Maner. ad nocumentum unius mesuagii, quod idem R. secund. Consuetud. Maner. præd. tenet in eadem Vill': & ideo vobis præcipimus, quod vocatis coram vobis partibus prædict', auditisq; hinc inde rationibus, eidem R. in præmiss. debitum & festinum iustitiæ complementum fieri faciatis prout secundum Consuetudinem Manerii prædict'. fuerit faciend', &c.

And note, that the demesn Lands of a Mannor, and the M Mannor it self which is called Ancient demesn, is pleadable at the Common Law ; and a man ought to sue his Action for the Mannor, and for the Lands which are parcel of the Mannor, at the Common Law, and in the Common Pleas. But if a man will sue for the Lands which are holden of the Mannor, which are in the hands of a free Tenant who holdeth of the Mannor, for these Lands he ought to sue this Writ of Droit close directed unto the Lord of the Mannor, and there he shall make his protestation to sue in that Court the same Writ in the nature of what Writ he will declare. And the form of Entry when such Writ is brought in Court is such :

Ad hanc Cur. venit R. N. per Nich. B. Attornatum suum ; per N Literas Patentes ipsius R. & liberavit præfatis Ballivis quoddam Breve Domini Regis nunc clausum, eisdem Ballivis directum, in forma juris secundum Consuetud. Manerii præd', exequend' cujus tenor sequitur in hæc verba : Hen.

Henricus, &c. Ballivis I. de S. salutem. Præcipimus vobis quod juste & sine dilatione, & secundum Consuetudinem Manerii de G. de S. plenum rectum teneatis Robert N. de duobus mesuagiis. &c. in W. & H. quæ. P. & C. ei deforceant, ne amplius inde clamorem audiamus pro defectu recti, &c. Et super hoc præd. Robertus N. invenit Pleg. de prosequendo Breve sum præd', scil. T. & W. & protestatur prosequi illud Breve in eadem Cur. in forma & natur. Brevis Assise novæ Disseisinæ ad Communem Legem, secundum Consuetud. Manerii præd', dicens quod præd. P. & C. injuste & sine iudicio disseisiverunt eum de libero Tenem. suo in W. & H. viz. de Tenementis præd. cum pertin. post primam, &c. Et per. inde processum fieri secundum Consuetud. ejusd. Man. præd', &c. Ideo secundum Consuetud. ejusd. Man. præcept. est T. H. subballivo Man. illius, & ministr' hujus Cur', quod facer. Tenementa illa reseisir. de catallis quæ in ipso capta fuer', & ead. Tenementa cum pertin. esse in pace usque ad proxim. Cur', coram præfatis Ballivis & sectatoribus ejusdem Cur', viz. die Jovis proxim. futur. hic. sc. apud S. tenend'; & interim faciat xii. liberos et legales homines de visn. de W. & H. præd. infra præcinctum Manerii prædicti videre Tenementa præd', et nomina eorum imbreviari facere. Et quod summ. eos per bonos Summ', quod tunc sint hic, scil. apud S. parati inde facere Recognitionem: Et quod ponat per vadios et salvos plegios prædict. P. T. Ballivum suum, si ipse inventus non fuerit, quod tunc sit hic apud S. ad audiendum illam recognitionem, &c. Et quod tunc habeat ibidem nomina Pleg. Summ', et dictum præceptum sibi inde direct. Et idem dies datus est præf. R.N. hic. &c.

[12]

See all this form to make protestation in the Book of Entries of Pleas, fol. 115. And then at the day of the Precept and Process returned, the Defendant ought to appear and plead in Bar, or unto the Writ, or other matter, in such form as shall be in an Assise at the Common Law. And if the Protestation be made in the nature of another Writ, then the Precept shall be according unto the nature of the Process which is given in such Writ; and the Tenant when he cometh in shall plead as he shall do in such Writ sued against him at the Common Law, for the nature of the Protestation doth alter and change the manner of pleading for the Tenant.

A And if false Judgment be given in this Writ, the party Tenant or demandant may sue a Writ of false Judgment thereupon.

B But he who holdeth Land in Ancient demesne by Copy of Court Roll, at the will of the Lord, who is called Tenant by base Tenure, if he be ousted of his Lands or Tenements there

there in Ancient demesne, he shall not have this Writ of *Droit close*, but he ought to sue by Bill in the Court of the Lord of the Mannor, and shall make Protestation to sue there in the nature of what Writ he will. But if false Judgment be given against him in that Court, he shall not have a Writ of false Judgment thereupon at the Common Law, nor other remedy; but to sue unto the Lord by way of Petition, as it appeareth in *H. 14. H. 4.* For those who hold their Lands in base Tenure in Ancient demesne, or by the Rod, hold them in Villenage, and they shall not have such Writ of *Droit close*, nor a Writ of false Judgment, &c. See the Stat. of 1 R. 2. cap. 6. of that matter.

Lit. 6. 2c.
14 H. 4. 34.
7 E. 4. 19.

And this term which is now at this day called Copy-tenants, or Copy-holders, or Tenants by Copy, is but a new found term, for of Ancient times they were called Tenants in Villenage, or of base Tenure; and that appeareth by the ancient Tenures that those who held by the Rod, or in base Tenure, or by Copy of Court Roll, were then called and named Tenants that held in the Villenage: for Tenants by Copy of Court Roll are not specified, nor named by such name; but yet at that time there were such Tenants, but then they were called Tenants in Villenage or of base Tenure. D

And when the Writ of *Droit close* cometh unto the Lord, or unto his Bailies, the Lord ought for to hold his Court, and to proceed thereupon according to Law, &c. And if the Lord will not hold his Court, then the Demandant may sue a Writ out of the Chancery directed unto the Lord, commanding him to hold his Court, &c. And if he will not hold it, then the Demandant may sue an Attachment against the Lord directed unto the Sheriff, returnable in the Common Pleas or Kings Bench, and thereupon the Demandant shall recover his damages.

And if the Writ of *Droit close* be directed unto the Bailies, &c. and they will not hold the Court, then he may sue such a Writ unto the Bailies, commanding them to hold their Court; and if they will not so do, he may sue an Attachment against them directed unto the Sheriff, returnable as aforesaid, &c.

And if the Lord himself ouste his Tenant of Lands which are holden of the Mannor by Charter in Fee, the Tenant who is ousted shall have this Writ of *Droit close* directed unto the Lord himself, if he will, &c. Or in this case he may have an Assise, or other Writ at the Common Law against the Lord of those Lands. But it appeareth by a Rule in the Register, that if the Demandant be defeated of Justice
in

in the Lord's Court, that then the Demandant may sue a Writ directed unto the Sheriff, commanding the Sheriff that he go unto the Court in Ancient demesne, and that he take with him four discreet Knights in their proper persons, to see that right be done unto the party demandant in this Writ; and if the Sheriff refuse so to do, he may have an *Alias* and *Pluries*, and Attachment against the Sheriff in the Common Pleas or King's Bench. But it seemeth that this Writ which shall be so sued directed unto the Sheriff, that he see right done to the Demandant, is of little effect, for by vertue of this Writ he cannot compel the Lord to do Right unto the Demandant, as it seemeth: *tamen Quere*: for if he cannot cause the Lord to do right unto the Demandant in a Writ of *Droit close*, then it shall be in vain to sue such Writ directed unto the Sheriff, to go unto the Lord's Court, and to see that right be there done. And the Demandant may sue such Writ directed unto the Bailies, or unto the Lord himself, commanding them that they do him right, &c. and that they do not delay the matter, &c. And thereupon an *Alias*, a *Pluries*, and *Attachment* if need be.

[13]

A And if a Plea be removed in the County, the Demandant may sue such Writ directed unto the Sheriff, that he proceed in the Plea, unto Judgment, and to do right; and upon that he shall have an *Alias*, a *Pluries*, and *Attachment* against the Sheriff, if he will not do accordingly.

B And note, that the Demandant in a Writ of *Droit close* cannot remove the Plea out of the Lord's Court for no cause, &c. nor the Tenant cannot remove the Plea out of the Ancient demesne, if not for causes which prove the Land to be Frank-fee, and not Ancient demesne; and the form of the Writ of *Recordare* to remove the Plea out of Ancient demesne is such:

34 H. 6. 35.
6 H. 4. 1.
50 E. 3. 24.
1 H. 7. 30.

D Rex Vic. Lincoln. salut'. Præcipimus tibi, quod assumptis tecum quatuor discretis & legalibus Militibus de Com. tuo, in propria persona tua accedas ad Cur. B. de C. & in plena Curia illa recordar. facias Loquelam quæ est in eadem Cur. per parvum Breve nostrum de Recto, inter, &c. de uno mesuagio cum pertin. in I. & Record. illud habeas coram Justic. nostris, &c. & partibus, &c. & habeas ibi nomina prædict. quatuor hominum, & hoc Breve, & aliud Breve, &c. Quia præd. A. in placitand. in Cur. præd. protulit Chartam Domini Henr', quondam Regis Angliæ, progenitoris proavi nostri, per quam idem proavus noster feoffavit W. patrem præd. A. (cujus Hæres ipse est) de mesuagio præd., ut dicitur, per quod idem A. dicit se non debere nec posse sine nobis respondere: Fiat executio istius Brevis; si causa sit vera, & præd.

præd. A. hoc, petat, et aliter non. There is another cause in the Register thus: *Quia clamat tenere Tenementa prædicta ad Communem Legem, &c.* But then in the Common Pleas when

A Vrit of Right Close is brought, and pendant the Vrit the Tenant accepts a Fine *Sur consueance de droit come ceo que il ad, &c.* yet the Land remains Ancient demesn as to that Action, because he hath affirmed his Plaint before the Fine, and so was it holden, 12 H. 7 Rot. 103.

the Record is removed, he ought there to shew some special matter to prove the Lands and Tenements to be Frank-fee, and not Ancient demesn, otherwise the Plea shall be sent back unto the Lord's Court: But to shew a Fine levied in the King's Court of the same Land; or

a Recovery had in the King's Court in a *Præcipe quod reddat, &c.* is a good cause to prove the Lands to be Frank-fee; and if he claim the Land by the Feoffment and the King's Charter, or by the Feoffment of Charter of the Lord of the Mannor; or if he claim to hold them of the

40 E. 3. 4.

50 E. 3. 24.

34 H. 6. 35.

6 H. 4. 1.

11 E. 3. Cause de remover Plea 16. If the Cause assigned may be tried in Ancient demesn, it shall not be removed.

King as of another Mannor of the Honor, &c. and not to hold them of the same Mannor; or if he say, that in an Assise brought before

of the same Lands or Tenements at the Common Law against another Tenant, that the Tenant said that they were

Register 11.

Br. remove

de Plea 35.

vld. en 17 E.

3. Cause de

remov. 1.

because

there were

but six Suitors,

and one Plaint,

and the other De f.

therefore removed:

so four not sufficient.

for Lands in

Gavelkind,

see 14. b.

26 H. 3. 4.

26 H. 3. 4.

3 H. 6. 34.

If a Frank-Tenant, of Ancient demesn, who holdeth his Tenements by Knights service and in Fee, be ousted and disseised of his Lands or Tenements, he shall sue at the Common Law, and not in Ancient demesn, for no Lands are Ancient demesn but Lands holden in Socage.

And a man shall have a Bill of *Freshforce* within forty days in the Lord's Court of Ancient demesn for the Lands after the Disseisin, and without suing any Writ thereupon; as a man shall have of Lands in a City or Borough: and there in that case, if the Tenant hath any matter to prove the Lands to be Frank-fee, he shall have a *Recordare* to remove the Plea out of Ancient demesn into the Common Pleas, &c.

And although the Plea in Ancient demesn be there without Writ, &c. if the Tenant remove the Plea out of Ancient demesn

demesn by a *Recordare*, and for cause shewed in the Writ, ^{34 H. 6. 35.} if the cause be not good, the Tenant in the Common Pleas ^{or 44 E. 3. 10.} shall not shew any new cause to retain the Plea in the Common Pleas: but if the cause in the Writ be, *which he claims to hold at the Common Law*, then in the Common Pleas he ^{21 E. 3. 32.} may shew what cause he will to retain the Plea there; which ^{Br. auncient demesn 18} cause shall prove the Tenements to be Frank-fee. ^{or 34 H. 6. 35.}

G And in Ancient demesn. if the Demandant and Tenant ^{35.} put themselves upon the Grand Assise, or the Tenant vouch ^{50 E. 3. 24.} a Foreiner, or plead a forein Plea which cannot be tried in the Lordship there; then a *Supersedeas* shall be granted out of the Chancery, directed unto the Lord of Ancient demesn, or his Bailies, if the Writ were directable to the good Cause. ^{1 H. 7. 30.} Bailies, that they shall surcease, &c. And the party Defendant shall sue his Writ of *Warranty* of *Charter* against the Vouchee, &c. ^{per Townsend.}

H And if the Sheriff do remove the Record in Ancient demesn by *Recordare* into the

Common Pleas, and afterwards the Bailies in the Court of Ancient demesn proceed in the Plea (notwithstanding the removing of the Record) then the Tenant may sue a *Certiorari* directed unto the Justices of the Common

^{12 H. 7 Rot. 103.} It is holden, that if they proceed after the record removed and award execution, that it is not void, ^{16 E. 3. 3.} Process 167. the party had *Audita querela* against the Judges upon that Case: and ^{17 E. 3. ibid. 186.} it was holden that the Sheriff shall be punished for his contempt.

Pleas to certifye the Tenor of the Record into the Chancery; and of this Removal and upon the Certificate into the Chancery, the Tenant shall have an *Attachment* against the Bailies who proceeded in the Plea directed unto the Sheriff, for to arrest them, returnable in the Common Pleas, to answer unto the King, and also unto the Tenant who sued forth the *Recordare*. But in Ancient demesn if the Tenant vouch a Foreiner to *Warranty*, then the Tenant ought to sue his Writ of *Warrantia Chartæ* returnable in the Common Pleas against the Vouchee, and upon this Writ sued to purchase a *Supersedeas* directed unto the Bailies of Ancient demesn, commanding them to surcease until the Plea in the *Warrantia Chartæ* be determined in the Common Pleas. And if the Bailies proceed after such Writ sued forth and directed unto them, the Tenant who sued the Writ may have an *Attachment* of them directed unto the Sheriff, &c. that he do attach them to answer in the Common Pleas at a certain day, &c. as well unto the King, as unto the party, for the Contempt, &c. But if the Plea of *Warrantia Chartæ* be discontinued in the Common Pleas, then the Deman-

[14.]

Writ De Monstraverunt.

Demandant in the Writ of *Droit close* may sue a Writ out of the Chancery directed unto the Justices of the Common Pleas, to certifie the King in the Chancery if the Plea of *Warrantia Chartæ* be pendant or discontinued, or not, so that if it be discontinued, &c. or determined, he may send unto the Bailies of Ancient demesn, that they proceed in the Plea.

v. 13. D:

29 R. 2. auncient demesn 41.

And if the Tenant claim to hold the Lands of the Lord in Ancient demesn by Knights Service, &c. the same is a good cause for to remove the Plea, because that Lands which are holden of the Mannor, which shall be taken Ancient demesn, shall not be holden of the Lord by other Services than Socage, ; for the Tenants in Ancient demesn are called *Sokemans*, that is to say in English, Tenants of the Plough.

30 E. 3. 6.
per Sidenham, contr.
if he refer
but Socage
Tenure.

And therefore if the Lord of a Mannor in Ancient demesn, before the Statute of *Quia Emptores terrarum*, maketh a Feoffment in Fee of the parcel of the Lands of the Mannor, to hold of him by Knights Service, such Tenant shall not have a *Monstraverunt*, if he be distrained for other Services than of right he ought to do, because his Lands are not Ancient demesn of the King, and yet they are holden of the Mannor which is Ancient demesn: But it is intended of such Tenures which shall do the Services of the Plough, viz. to Plough and Till the Lord's Lands, to Mow the Lord's Meadows, or other such like Services as are for the maintaining of the King's sustenance or victuals, and his Subjects; and for such Services such Tenants have such liberties and priviledges in the Law, that they may the more quietly use their Husbandry, and do their Services.

Writ de Monstraverunt.

42 E. 3. 22.

THe Writ of *Monstraverunt* lieth for the Tenants of Ancient demesn who hold by free Charter, and not for those Tenants that hold by Copy of Court-Roll, or by the Rod, according to the Custom of the Mannor, at the will of the Lord. And these Tenants ought to be Tenants which hold of a Mannor which was in the hands of *S. Edward* the King and Confessor, or in the hands of King *William* the Conqueror; which Mannors are called Ancient demesn of the King, or the Ancient demesn of the Crown of *England*. And to these Tenants (who hold of such Mannors) there are many and divers liberties, gifts and grants by the Law:

as, to be quit of Toll, and Passage, and such impositions which

men shall demand of them for the Goods or Chattels sold or bought by them in Fairs or Markets; and to be quit of Taxes and Tallages granted by Parliament; if not, that the King lay a Tax upon Ancient demesne, as he may for some great cause, whensoever it seemeth good unto him. And also Tenant in Ancient demesne ought to be acquitted of the payment of the expences of the

19 H. 6. 66. per *Newton*, Tenants in Ancient demesne shall be quit of Toll of things which they sell which are arising of their Lands, and so of all things which they buy, which are for the manurance of the Land; but *Quere* if they shall be quit for all things bought and sold.

Vide 161, they shall be quit of Scit to Leets and Hundreds. Vid. 22. El. Dyer 377. Register 181. Br. ancient demesne 44. 7 H. 6. 35. Martin. ac.

F Knights which came to Parliaments, and also they ought not to be impannelled or put upon Juries or Inquests in the Country out of their Mannor or Seigniorie of Ancient demesne, if they have not other Lands at the Common Law for which they ought to be charged, &c. And if such Tenants, or any of them who hold of the Mannor of Ancient demesne, be distrained to do unto their Lords other Services or Customs than they, or their Ancestors have used to do, then they may sue this Writ of *Monstraverunt* directed unto the Lord, Commanding him that he do not distrain them to do other Services or Customs than they have used to do: Or they may have this writ of *Monstraverunt* directed unto the Sheriff; and that is where the Writ of *Monstraverunt* is first sent unto the Lord, that he do not distrain his Tenants, &c. Or they, upon this Writ sued and directed unto the Lord, may have and sue another Writ directed unto the Sheriff, rehearsing, That where he hath sent his Writ unto the Lord of Ancient demesne, that he should not distrain his Tenants, &c. and if the Lord will not do it, and suffer the Tenants to be in peace, that then the Sheriffs shall do it, and cause the Lord to suffer the Tenants to be in peace, and that he do not distrain them for other Services than of Right they ought to do. And the form of the Writ directed unto the Lord is such:

G Rex Abbati de C. salutem. *Monstraverunt nobis homines tui de Manerio de I. quod est de antiquo Dominico Corone Angliæ, ut dicitur, quod tu exigis ab eis alias Consuetud. & alia Servitia, quam facere debent; & antecessores sui Tenentes de eodem Manerio facere consueverunt temporibus quibus Manerium illud fuit in manibus progenitorum nostrorum quond. Reg. Ang. vel in manu nostra. Et ideo tibi præcipimus, quod a præf. hominibus non exigas, seu exigi permittas, alias Consuet. & alia Servitia*

40 E. 3. 41. *Quere* if they shall have this Writ without being distrained.

40 E. 3. these words prove that they may have this Writ before Distrels.

[15]

quam

Writ De Monstraverunt.

quam facere debent, et antecessores sui prædicti. facere consueverunt temporibus prædicti. Et nisi ad mandatum nostrum hoc feceris, A. Vicecom. nostr. Linc', id fieri præcipimus. Teste, &c. And upon this Writ they may sue another Writ of *Monstraverunt* directed unto the Sheriff, which shall be in this form: Rex Vic. Lincoln', &c. *Monstraverunt nobis homines Abbatis de Manerio de I. quod est de antiquo Dominico Coronæ Angl', ut dicitur quod idem Abbas exigit ab eis alias Consuetud. et alia Servitia quam facere debent, &c.* [usque ibi, in manu nostra:] per quod eidem Abbati Præcipimus, quod à præf. hominibus non exigeret, vel exigi permetteret, alias Consuetud. vel alia Servitia quam facere debent, et antecess. sui præd. facere consuever. tempor. prædicti. Et ideo tibi præcipimus, quod nisi idem Abbas ad mandatum nostrum hoc fecerit, tu id fieri fac', ne amplius inde clamorem audiamus pro defectu Justitiae, &c.

And it seemeth that by this Writ directed unto the Sheriff, the Sheriff may charge the Lord, that he do not demand nor distrain them for other Services than they ought to do, and that the Sheriff may make resistance and rescous unto the Lord if he distrain the Tenants for other Services, &c. and that the Sheriff may take the power of the County to resist the Lord in such case, or the Sheriff may command the Neighbours who dwell next to the Mannor that they resist and do rescous unto the Lord if he will distrain his Tenants, &c. And it seems they may justify the same by the commandment of the Sheriff, if he have such a Writ sent unto him, &c. And after the Writ directed unto the Sheriff, if the Lord distrain, the Tenants may sue an *Attachment* against him, returnable in the Common Pleas, or the King's Bench, to answer to them for this Contempt; and if it be found for them, they shall recover their damages.

Com. 129.
2 H. 6. 26.

And note that the Writ of *Monstraverunt* shall be sued by many of the Tenants without naming any of them by their proper names, but generally, *Monstraverunt nobis homines, &c.* But in the *Attachment* against the Lord by the Tenants, the Tenants ought to be named by their proper names, thus;

Rex, &c. Si A. de B. C. de F. et homines Abb. M. de Manerio de I. quod est de antiquo Dominico Coronæ Angliæ, ut dicitur, fecerint, &c. tunc. pone, &c. prædicti. Abbas. quod sit coram, nobis, &c. ubicunque, &c. ostensurus quare exigit a præf. hominibus alias Consuetud. & alia Servitia quam facere debent, & antecess. sui Tenentes de eodem Manerio, facere consuever. temporibus quibus Manerium illud fuit in Manibus progenitor. nostror.

*noſtror. quond. Reg. Angliæ, vel in manu noſtra, ſi caſus ſic fue-
rit, contra prohibitionem noſtram. Et habeatis ibi nomina Pleg,
& hoc Breve. Teſte, &c.*

E And there is another Writ of *Monſtraverunt*; where the Tenants of any Hamlet, which Hamlet is parcel of a Manor of Ancient demefn, are diſtrained by the Lord, they ſhall have ſuch Writ :

Rex, &c. Monſtraver. nobis homines tui de Hamleto de I. quod eſt membrum Manerii de B. quod eſt de antiquo Dominico Coron, Ang'. ut dicitur, &c.

F And it ſeems that in the Writ of *Attachment* he ought or may name all thoſe Tenants by their proper names which are diſtrained after the Prohibition delivered unto the Lord; and it behoveth not to name other Tenants by their

G proper names, but in the generality, *Et homines, &c.* And if one of thoſe who is named by his proper name will not ſue, &c. he ſhall be ſevered, &c. And he that is *Nonsuit* ſhall not grieve his Companions. And it ſeemeth that every one ſhall recover his damages ſeverally, becauſe they are ſeverally diſtrained, and one may be more damnified than another, &c.

H And one Tenant may ſue the Writ of *Attachment* in his own name by his proper name, and in the name of the other Tenants by general words, &c. *Et hom nes, &c.*

I And if the Tenants do ſue an *Attachment* againſt the Lord, becauſe he diſtrained them after the Writ of *Monſtraverunt* delivered unto him, and pending the Writ of *Attachment* the Lord diſtrain them again by their goods; then the Tenants ſhall have a ſpecial Writ of *Attachment* againſt the Lord, rehearſing the matter; and in the ſame Writ the Sheriff ſhall be commanded to re-deliver unto the Tenants their goods, if the Lord have taken them, &c. And this Writ ſhall be ſued only in the name of thoſe Tenants which are again diſtrained pendant the Suit, and not in the name of them all, as the other Writ is ſued; and the Writ ſhall be ſuch.

Rex Vic', &c. Si A. & B. homines Abb. de C. de manerio de N. quod eſt de antiquo Dominio, &c. ſec', &c. tunc pone, &c. præd. Abbatem, &c. oſtenſur. quare cum nuper ad proſecutionem, dict. hominum nobis ſuggerent. præſat. Abbat. exegiſſe alias Conſuetud & alia ſervitia quam facere debent, & anteaſſ. ſut Tenent. de eodem Man', &c. (uſque ibi, Reg. Angliæ) tibi præcipimus, quod poneres per Vad. & ſalvoes Pleg. prædict. Abbatem, quod eſſet coram nobis à die Paſche proxim. præterito in quindecim dies, ubicunque, &c. ad reſpondend. præſat. homini-

[16]

H

bus

Writ De Monstraverunt.

bus de præmiss. idem Abbas (pendent. coram nobis placito Attachiment. præd.) prædict. homines eo gravius distrinxit, & omnia bona, catalla ac averia sua in eodem Manerio inventa eis abstulit, & ea eis adhuc detinet, quo minus ipsi placit. Attach. præd. pro paupertate prosequi possint, in nostri ac mandatorum nostrorum prædict. contemptum, & præd. hominum dispendium non modicum, & prosecutionis juris sui retardat, & status sui depressionem manifestam. Et averia, bona & catalla præd. eisdem hominibus per sufficientem securitatem interim deliberare facias. Et habeas ibi nomina Pleg, & hoc Breve. Teste, &c.

And in this Writ of Monstraverunt, the Plaintiff in the A Writ of Attachment may count severally, and then they shall recover several damages. But they may count together
 39 E. 3. 6. in one Count, and declare how they were severally distrained.
 ret. Monstr. ed, &c. and it is not necessary to alledge in the Count the
 2. 49. E. 3. day or the place where the Lord distrained them. And the
 per Belknap form of the Count or Declaration is such :

A.B. summ. fuit ad respondendum C. D. & F. & hominibus præd. A. de Manerio de S. quod est de antiquo Dominico Coronæ Angl', &c. de placito, Quare exigit ab eis alias Consuetud. & alia Servitia quam facere debent, et eor. antecessores, Tenentes de eodem Manerio, facere consueverunt temporibus quibus Manerium illud fuit in manibus progenitorum, &c. Regum Angl', ad grave damnum ipsorum C. D. & F. &c. Et unde iidem homines per T. S. Attorn. suum queruntur, quod cum eorum antecess. Tenent. de eodem Manerio tempore quo Manerium illud fuit in manibus Domini Henrici quondam Regis Angl', proavi eidem avo Domini Regis nunc, tenuissent Tenement. sua per certa Servic', scil. quilibet eorum tenebat unam virgat. terr. de eodem Maner', &c. per fidelitatem & servic. quinque solid', & faciend. Sect. ad Cur. dicti Maner. de S. bis in anno, viz. ad festum sancti Mich. & ad festum Paschæ ; & si contigisset Breve de Rebo fuisse in eadem Cur. placitand', faciend. Sect. in eadem Cur. de tribus septimanis in tres septim', &c. quamdiu Breve illud pendens fuit in eadem Cur' ; & quando Dominus Rex burgos suos & Dominica sua talliaverit, &c. pro omnibus Servitiis ; & qui plus Teræ tenuissent de prædict. Maner', plus redditus redderent, &c. Et iidem Tenentes huiusmodi statum continuassent a tempore ejusd. Hen. proavi, &c. de Rege in Regem progenitorum, &c. usque ad tempus præd. Domini Regis Edwardi avi, &c. Quod prædictus A. Dominus Manerii prædicti, distrinxit ipsos C. D. & F. & alios homines, &c. ad Sectam faciend. ad præfatam Curiam de tribus septim. in tres septimanas per totum annum, &c. & talliando ipsos alto & basso pro voluntate sua, exigend. ab eis pro filiis et filiabus suis maritand', & alia Servitia & Consuetud. Villain', que facere non debent,

debent, nec solebant, unde hic, quoa deteriorati sunt & damnum habent ad valentiam C. l. & inde product. Settam, &c.

B And whether they shall recover severally damages upon that joynt Count, it is a doubt, yet it seemeth reasonable that they may, because it is several in its nature, because they count upon their several Tenures, &c. and how that he hath distrained them severally; by which it seems but reasonable that the Jury do enquire of the damages severally, if they pass for the Demandants, or that several writs of enquiry of damages be awarded in that case, if the matter be adjudged with the Demandants. But it seems no Tenant shall recover damages, but those who are specially named in the Writ of Attachment sued upon the *Monstraverunt*, and not the other men.

C And note, that the Lord of Ancient demesne shall not be put to answer to the Writ of Attachment sued against him upon the *Monstraverunt*, before the Court be certified by the Treasurer and Chamberlains of the Exchequer, whether the Mannor be Ancient demesne: And therefore it behoveth the Plaintiffs in the *Monstraverunt* to sue forth a special Writ unto the Treasurer and Chamberlains of the Exchequer to certifie the same: And the Writ is such.

Rex Thesaur. & Camerariis suis salutem. Quia quibusdam certis de causis certiorari volumus, utrum Manerium de I. in Com. C. sit de antiquo Dominico Corone Angliæ necne, vobis mandamus, quod scrutato Libro nostro de Domesday, de eo quod inde inveneritis nos, sub sigillo nostro Scaccarii nostri, distinte & aperte sine dilatione redd. certiores, remittentes nobis hoc Breve Teste, &c.

D And note that the Book which is called *Doomsday-Book* was made in the time of *S. Edward*, and all the lands which were in the Seisin and in the hands of the said *S. Edward* at the time the said Book was made are Ancient demesne, and the lands which were in other hands and are not named in the said Book are Frank-free: and those Tenants which held in base Tenure, as by Copy of Court Roll, or by the Rod, cannot sue nor maintain this Writ against the Lord: And the death of one Tenant, nor his Non-suit, shall not abate the Writ. And if the Frank-Tenants and the Tenants by base Tenure joyn in a *Monstraverunt*, the Writ shall not abate, but for the Tenants by base Tenure.

2 R. 3. 1.
39 H. 3. 6.

Writ de Warrantia Diei.

[17] **W**Rit of *Warrantia Diei* lieth in case where a man hath A Day in any Action brought against him to appear in proper person, and the King at or before the day send him in or about his Service, so as he cannot appear in Court at the day; then may he sue forth this writ directed to the Justices, reciting the whole matter, commanding them that they do not record his Default for that day for the cause before mentioned: And it is not material whether the cause be true or not, when the King doth certify that the party is in his service. For it seemeth by the words of the Writ, that the King by his Prerogative may warrant this default for a day. And so it seemeth, that if the Tenant in a *Præcipe quod reddat* at the *Grand Cape* or the *Petit Cape* returned make Default, that before Judgment upon this Default the King may send such a Writ unto the Justices, rehearsing that the party is in his Service, and commanding them that his Default do not prejudice him: and it standeth with reason that the King may so do, because that every one is bounden to serve the King in his business. But what process shall the Court award if the Tenant will not appear at the day of the Default recorded, nor after when the Writ of *Warrantia Diei* comes unto the Justices? It seemeth a new Summons shall issue out of the Common Pleas, to Summon the Tenant anew, because that his Default at his return is excused by the Writ of *Warrantia Diei*. But if the Writ *Warrantia Diei* do not excuse the default at the *Grand Cape*, then it seems a new *Grand Cape* shall go forth upon the first Default returned at the Summons of the *Præcipe quod reddat*. *Quare* of that. And the King may grant such Writs to save two Defaults at two several days, &c. *Quare* of these matters, because they are out of use at this day. And the form of the writ is such:

Rex Justiciar. suis de Banco salutem. Sciatis quod A. fuit in D servitio nostro per præceptum nostrum die Lune in Crastin. xv. Pasch. proxim. præterit, ita quod eo die interesse non potuit Loquel. quæ est coram vobis per Breve nostrum inter B. petent, & præd. A. Tenentem, de una mesuagio cum pertinent. in N. unde idem A.C. versus prædict. B. inde vocavit ad Warr' ut dicit: Et ideo vobis mandamus, quod præd. A. propter absentiam suam ad illum d'em, non conatur in defectu, nec in aliquo sit perdens, quia diem illum quando hoc warrantizabim. Teste, &c.

The form of the Writ to sue two Defaults is: *Rex, &c. ut supra*

supra. Sciatis quod A. fuit in servitio nostro per præceptum nostrum die Jovis in Octabis S. Hill', & die Lune in Crastin. Animarum proxim. præteritis, ita quod diebus ill. interesse non potuit Loquel. quæ est coram vobis per Breve nostrum inter, &c. Et ideo vobis mandamus, quod præd. A. propter absentiam suam ad dies illos non ponatur in defectu, quia dies illos quoad hoc ei warrantizabimus, Teste, &c.

E And these two Writs are not granted but by the King himself by the rule of the Register; and the King may grant such Writs unto the Major and Sheriffs of London, or unto the Bishop of Durham in the County Palatine, or unto the Justices of Assise, or in the Eyre, or unto the Sheriff: and these Writs may be granted as well for the Demandant and Plaintiff as for the Tenant; and then the Writ is such:

F *Rex, &c. Sciatis quod A. fuit in servitio nostro die Lune in Crastino Quinden. Pasch. proxim. præterit', ita, &c. inter ipsum A. Petentem, & B. Tenentem, &c. And there it shall be said in Crast. Quind. Pasch. because that the Pleas cannot be holden Quind. Pasch. because that is Sunday, which is the Sabbath day. And the King may grant this Writ by Testimony of his Steward thus:*

Rex, &c. Quia A. fuit coram Sen. & Marescallo nostro die Inn. in Quindena sancti Johannis Baptist' proxim. præterit. in divers. inquisit', quæ coram iisd. Senesc. & Maresc. prædict. die sum. fuer. apud E. sicut idem Sen. noster coram nobis testificatus est: Vobis mandamus, quod præd. A. pro eo quod non venit coram vobis in aliis inquis. quæ coram vobis eod. die summon fuer, non amerciemini, nec exitus, si in quos coram vobis ea occasione inciderit, perdere permittat Teste, &c.

G And it seems by this Writ, that the Justices ought to make a special Entry thereof, and to save the issue of this Juror, and also to make a special Estreat of this matter, and to levy no issues upon these Jurors for whom such Writs come unto the Justices.

H And if a man be essoined of the King's service in any Action &c. whereas in truth he is not in the King's service, then the Plaintiff or Demandant may sue forth a special Writ out of the Chancery directed unto the Justices, rehearsing that he is not in the King's service, commanding them to proceed. But by the Statute of Gloucester, if he do not bring his Warrant at the day given he shall lose 20 s. for the journey; and shall be in the King's mercy, and the Essoin dissolved. And if the Plaintiff purchase such Writ directed to the Justices, that he is not in the King's service, then the Essoin shall not be adjourned, but shall be presently quashed, and he shall

Writ of False Judgment.

not have day by adjournment to bring in his Warrant to warrant the Effoin.

Writ of False Judgment.

[18.] **W**Rit of False Judgment lieth where False Judgment is given in the County, or in the Hundred, or in other Court-Baron which is not a Court of Record, in a Plea Real or Personal, as if in a Writ of Right Patent, or in other Personal Plea; there the party Plaintiff or Defendant which is grieved shall have this Writ, and the Writ shall issue first out of the Chancery: And if the False Judgment be given in the Sheriffs County-Court, then the Writ shall be directed unto the Sheriff himself, and shall be such:

22 Aff. 64.
Br. Error
120. if the
Free holders
be recorded
by Plea,
where it
ought to be
by Writ, it
is Error, and not void, & coram non iudice: But where Judgment is given of Lands, Contract, or Covenant, which is out of their Jurisdiction, it is void, & coram non iudice.

vide; & s
Ma. Oyer.
141. the
writ was
challenged
because it

was sub sigillo tuo & sigillis quatuor legalium hominum ejusdem Curie, and good, ut
sanble.

Henric', &c. Vic. Linc. salut. Si A. fecerit, &c. tunc in pleno B
Com. tuo record. fac. Loquelam quæ est in eod. Com. per Breve nostr.
de Resto inter A. Petent. & B. Tenent', de uno mesuag. & cent.
acr. terræ cum pertin. in C. unde idem A. queritur falsum sibi
factum fuisse judic. in eod. Com'; & Record. illud habeas co-
ram Justic. nostr. apud Westm. tali die sub sigillo tuo, & per
quatuor legal. Milit. ejusdem Com. ex illis qui Record. illi inter-
fuerunt: & summ. per bonos Sum. prædict. B. quod tunc sit ibi,
auditurus Record. illud. Et habeas ibi Summ', nomina quatur Mi-
litum, & hoc Breve.

And if the Tenant hath aliened the Land after Judgment C
given against the Demandant, then the Summons shall be
made in the Writ against him who is Tenant of the Land,
and against him who was Tenant at the time of the Judg-
ment given, by these words, viz. & summ. per bonos Summ.
præd. B. & C. qui mesuag. & terram illam nunc tenent, quod
tunc sint ibi, auditori, &c.

And if the False Judgment be given in another Court D
Baron than in the Sheriffs Court, then the Writ of False
Judgment is called a Writ of Accetas ad Curiam, and shall
be directed unto the Sheriff; and the Writ is such:

Rex Vic. Linc. salutem. Si A. fecerit te securum de clam. suo
prosequend', tunc assumptis, tecum quatuor discret. & legalibus,
Militibus de Com. tuo in propria person. tua acced. ad Curiam
B. de C. & in plena Curia illa record. fac. Loquelam quæ fuit in
eodem Curia per Breve nostrum de Resto inter A. Petent. & B. Te-
nent'

nent', de uno mesuag. &c. unde A. queritur falsum sibi factum fuisse iudicium in ead. Curia; & Record', &c. sub sigillo tuo, & per quatuor legales homines ejusdem Curie ex illis qui Recordo illi interfuerunt; & s'mm', &c. & habeas ibi nomina predict. quatuor hominum, & hoc Breve.

E And in this Writ of *Accedas ad Curiam* he shall take with him four men, but it needeth not that they be Knights: but so shall it not be in the other Writ of *Recordari facias Lique-lam*, which is in the County. But both Writs shall be returned under the Sheriffs Seal, and the Seals of four of the Sutors of the same Court. And in the Writ of false Judgment which is *Accedas ad Curiam*, it is a good Return for the Sheriff for to say, that after the receipt of the Writ, and before the Return thereof, no Court was holden; and also that he required the Lord to hold his Court, and he would not, so as he could not execute the same. And thereupon the Justices shall award a *Distringas* directed unto the Sheriff, to distrain the Lord to hold his Court; and *Sicut Alias*, &c.

F In a False Judgment against an Abbot the Plaintiff was Non-suit, and the Abbot had a *Scire facias* against the Plaintiff, to shew why he should not have Execution, and to have the Judgment executed returnable at 15 Pasc. at which day the Plaintiff appeared, and assigned his Errors, and tendred Sureties to sue with effect, and prayed a *Scire facias* against the Abbot to hear Errors. And the opinion of the Court was, that he might assign the Errors against the Abbot, without suing any *Scire facias* against him, because they had day by the Roll.

G If the Writ of false Judgment abate for default in the Writ, then the Plaintiff shall not have a *Scire facias ad audiend. Errores* upon the Record certified, because it cometh without an Original, when the Original abateth. But if the Plaintiff die, it seems that if the False Judgment be given in the base Court upon a Writ of *Droit Patent*, that then his Heir shall have a *Scire facias ad audiend. Errores* against him who recovereth upon that Record which is removed into the Common Pleas. And if the Plaintiff in the Writ of False Judgment be Non-suit, whether the other party shall sue Execution upon this Record so removed against the Plaintiff, without suing forth a *Scire facias*, is a question. But *Hill. 23 H. 6.* the opinion was, that he shall have Execution without suing forth a *Scire Facias*.

H And Tenant at will according to the custom of the Manor, which is Tenant by Copy of Court-Roll, shall not have a Writ of False Judgment upon a Judgment given against

H 4

him

14 H. 4. 19.
7 E. 4. 23.

34 H. 6. 43. him : But where False Judgment is given upon a Writ of contrary, if the Justices be removed in the Kings Bench by a *Pone.*

2 H. 4. 4. upon False Judgment given in Court before Bailies or others who hold Plea by prescription, in every sum in Debt by Bill before them, he shall not have a *Faux Judgment*, but a Writ of Error thereupon. *Quod vide M. 4. E. 4. in Title Trespass.*

2 H. 4. 4. therefore it seemeth Error lieth in a Court of Pipowder. Vid. 13. E. 4. 18 6. E. 4. 43. 7 E. 4. 23.

[19.] 21 H. 4. 23. contr. and 21 H. 6. 34. the party had a *Scire fac.* to have Execution out of the Common Pleas.

Justices directed unto the Sheriff, the party grieved shall have a *Faux Judgment*, and not a Writ of Error, although the Judgment be of Debt, or Trespass over the sum of 20 s.

And a man shall not have a Writ of False Judgment but in the Court where there are Suitors; for if there be no Suitors, there the Record cannot be certified by them. And upon False Judgment given in Court before Bailies or others who hold Plea by prescription, in every sum in Debt by Bill before them, he shall not have a *Faux Judgment*, but a Writ of Error thereupon. *Quod vide M. 4. E. 4. in Title Trespass.*

In False Judgment upon a Writ of Right Patent or a Writ of *Droit close* the Plaintiff shall not assign Errors before the Records certified, as well the Original as the residue of the Record. And the Writ of false Judgment lieth against a stranger to the Judgment, if he be Tenant of the Land, without naming him who was Tenant and party to the Judgment. Otherwise it is of a Writ of Error, for there he ought to name him who was party to the Judgment, be he Tenant or not.

And where the Tenant loseth his Land by False Judgment in a Writ of Right in a Court-Baron, he shall not have a Writ of False Judgment before that the Demandant hath entred upon him, &c. *Quod vid. M. 38. E. 3.*

And where the Defendant in *Faux Judgment* after appearance by him maketh Default, a Grand distress shall issue out against him. And if he again make default, or cometh and will not saye his Default, the Plaintiff in the Writ of False Judgment shall have Judgment to recover Seisin of the Land against him : *quod vide M. 13 E. 2.* And the Writ of False Judgment given in Ancient demesne is such :

Rex Vic. salut. Si A. fecerit, &c. accedas ad Cur. B, &c. & recordari fac. Loquelam que est in eadem Cur. per parvum Breve nostrum de Recto inter A. Petentem, &c. & habeas ibi nomina predict. quatuor hominum, hoc Breve, & aliud Breve, &c.

And in a Writ of *Droit close*, if the Writ of the Demandant be abated, whereupon he bringeth his Writ of False Judgment in the Common Pleas, and there the Judgment is reversed; and the Writ awarded good; then he shall hold Plea in the Common Pleas, and a Judicial Writ shall issue from the Common Pleas in nature of protestation made in the first Writ; and if the Protestation were in the nature of *Affise of Mortdauhteslee*, the Justices shall direct a Writ unto the Sheriff to summon the Jurors to come out of Ancient

cient demesn thither, and all the matter shall be tried and determined in the Common Pleas : and although the Judgment be given of the Land in the Common Pleas, yet the Land shall be Ancient demesn. *Quod vide M. 3. E. 3. in Title of Faux Judgment.*

E And upon the Writ of *Faux Judgment* which is an *Accedas ad Curiam*, if the Sheriff return that the Writ *adeo tarde ven'*, *quod Executionem ejusdem facere non potuit* ; then he shall have a *Sicut alias* directed unto the same Sheriff : and if he return not that at the day, then he shall have a *Pluries* to the same Sheriff. And he may have these Writs of *Alias* and *Pluries* out of the Common Pleas where the first Writ was returned *tarde*, if he will, or he may have them out of the Chancery, &c. See for this matter in the Book of Entries, f. 114, & 115. And upon the *Accedas ad Curiam*, if the Sheriff return, that he will go unto the said Court, &c. and there pray the Lord to hold his Court, that he may do Execution of the Writ, and that the Lord refuseth to hold his Court, &c. by reason whereof he cannot do Execution of the Writ ; then a *Distringas* shall issue out of the Common Pleas directed to the Sheriff, to distrain the Lord, so that he distrain him to hold his Court at a certain day appointed by the Sheriff ; *Et quod Vice', assumpt. secum quatuor discretis Militibus, &c. de Comitatu' &c. accedat ad Curiam, &c. & Scire fac. hic in xv. Pasche, &c. & Record. illud tunc habeat, &c. & quod summ. prad. I. quod sit ibi, auditurus Record. illud, &c. Quod vide Lib. Intrac' f. 117.*

F There is another Writ of *Faux Judgment* ; when there is a Plaint in the County of Debt or Trespas without any Writ, then the Writ of *Faux Judgment* in the County shall be thus : *Recordari. fac. Loquelam qua fuit in eadem Curia sine Breui nostro, inter, &c. de quadam transgr', &c. unde idem A. querit. falsum sibi fact. fuisse judic', &c.* And where *Faux Judgment* is given in another Court than the County, upon a Plaint, or upon a Writ, then the Writ shall be thus :

Rex. Vif. salut'. Si A. fecerit, &c. tunc accedas ad Hundr. A. de B. vel ad Curiam A. de C. & in pleno Hund. vel Curia recordari fac. Loquelam qua est in eodem Hund. vel Curia per Breve nostrum, vel sine Breui nostro, de eo quod idem A. teneat prefat. B. conventionem, inter eos factam de uno mesuagio cum pertin. in F. unde queri ur, &c.

G And if a Baron and Feme be sued in a Court Baron by a Writ of Right, and the Feme is received for the Default of the Husband, and plead there, and false Judgment is given against him, she and the Husband may have a writ of False Judgment, as appeareth by the Register. And

Writ de Executione Judicii.

And there is another Writ there, where the Husband and Wife pray to be received in a Court-Baron in a Writ of Right upon the default of Tenant for term of life, and were not received; and for False Judgment given against the Tenant for term of life they shall have a Writ of False Judgment, &c.

There is another Writ of *Faux Judgment* in the Register for him in the Reversion, who prayeth to be received in a Court-Baron in a Writ of Right upon the Default of two Tenants for life, where he was received for the Reversion of one of the Tenants, and the Receipt was counterpleaded for the Reversion of the other Tenant, and Judgment given, &c. And there it appeareth, that one Tenant was Tenant of certain parcel of the Land, and the other Tenant was Tenant of the other parcel of the Land.

There is another Writ of *Faux Judgment* for him that hath Judgment given against him in the Court of a Lord, who hath power to hold Pleas before his Bailies by the King's Charter: but it seemeth that in that case he shall have a Writ of Error, and not a Writ of *Faux Judgment*.

There is another Writ of *Faux Judgment* directed unto the Sheriff, viz. *Accedas ad Curiam: Ad Curiam nostram de Winchester, & in plena Curia illa record. fac. Loquelam que fuit in eadem Curia sine Breui nostro, secundum Consuetudinem Civitatis predict', inter W. Petentem, & D. Tenentem, de uno messagio in Winch. predict', unde idem W. &c. queritur falsum sibi factum fuisse judic', &c.* But upon Assise of Fresh force a Writ of False Judgment doth not lie, but a Writ of Error. And if the Writ of False Judgment be returned before the Justices of the Common Pleas, and the Defendant comes and saith and averreth that the Record is otherwise than it is certified, the Averment shall be received, and that issue shall be tried by the Country, or by those who were present in Court when the Record was made, and by others of the Country; and if they come not, then the Enquest shall be by the Country, as appeareth by the Stat. de Anno 1 E. 3. cap. 5. *Rasal, Faux Judgment 2.*

[20]

34 H. 6. 42.

Writ de Executione Judicij.

WRIT de Executione Judicij lieth where Judgement is given in the Court of any Lord upon a writ of Right Patent, or upon a Plea of Debt, or Trespas, in the same Court, or in the Hundred, County, Court-Baron, or in any other Court

Court of Record ; and if the Sheriff or the Bailly will not do Execution of the Judgment, then the party shall have this Writ directed unto the Sheriff or the Bailly, in which Court the Execution ought to be ; and if they will not do Execution, he shall have an *Alias* and a *Pluries*, with this clause in the Writ of *Pluries*, *vel causam nobis significes quare*, &c. And if they do not Execution upon this Writ, or return not some reasonable cause wherefore they delay the Execution, the party shall have an Attachment against him who ought to have done the Execution returnable into the King's Bench, or into the Common Pleas. And if the Plea be in the Lords Court-Baron, then the Writ of Execution shall be directed unto the Bailly of the Court. But if the Plea and the Judgment be given in the Sheriffs Court, as in the County-Court, then the Writ shall be directed unto the Sheriff himself to do Execution, and the *Alias* and *Pluries* shall be to the same Sheriff ; and if they will not do Execution of the Judgment, then an Attachment against the Sheriff shall be directed unto the Coroners, returnable as abovesaid, to answer, &c. And so if the Writ de *Executione Judicij* be directed to the Bailies of any Court of any Lord, or unto the Bailies of a Hundred, to do Execution, and at the *Alias* and *Pluries* they will do nothing, the Attachment shall be to the Sheriffs against the Bailies, returnable as abovesaid, to answer, &c. And if the Judgment being in a Court of Record, then it seemeth that the Writ de *Executione Judicii* shall be directed unto the Justices of the same Court where the Judgment was given, to do Execution, and not unto the Officer of the Court. For if the Officer of the Court will not execute the Writs directed unto him, nor return them as he ought, the Judges of the Court may amerce him. The form of the Writ is :

C. *Henr', &c. Lancastr' salut'. Præcip. tibi, quod Execution. judicii nuper reddit. in Com. tuo de Loquela quæ fuit in eodem Com. per Breve nostrum de Recto, inter A. Petentem, & B. Tenentem, de uno mesuagio cum pertin. in I. sine dilatione fieri fac', &c. Teste, &c.*

Writ

Writ de Error

A Writ of Error properly lyeth where False Judgment is given in any Court which is a Court of Record, as in the Common Pleas, or in London, or other City, or other place where they have power to hold Plea by the King's Charter, or by prescription, in any sum in Debt or Trespass over the sum of 40 s. And if False Judgment be given in London, or other place which is a Court of Record, the party grieved shall have a Writ of Error, and this writ may be returned into the Common Pleas, or in the King's Bench, at the pleasure of him who sueth the same.

28 H. 6. 11.
The form of
Writ of Er-
ror to the
Justices of
the Com-
mon Pleas is
Joh. Trifet
Capital.
Just. & so-

ciis. Just. & non Capital. Just. tantum; for the Records there are not before him alone, But in the Exchequer the Writ is not *Thesaurarius & Baronibus*, but *Baronibus tantum*. 34 H. 6. 27. Error was brought 3 die from the Return, where the Judgment was the first day, and well, because after the Judgment, 15 E. 4. 18. If a Record be removed out of the Exchequer into the Exchequer-Chamber by Error, when Judgment is given all shall be remanded into the Exchequer, and Execution shall be awarded there, but that is by the Statute of 31 E. 3. cap. 12. otherwise it is of other Courts.

And when the Record is removed by Writ of Error into the Comon Pleas or Kings Bench, then the Plaintiff ought to assign his Error, before he have a *Scire facias* against the Defendant *ad audiendum errores*. And if he assign divers things for Errors, which the Court thinketh to be no Errors, he shall not have a *Scire facias* upon this Assignment. But after Errors assigned, and a *Scire facias* awarded against the Defendant upon that Assignment, he shall not assign an Error in fact, as to say, that the Plaintiff was dead at the time of the Judgment, or before the Judgment, &c. But he may assign as many Errors as do appear in the Record, and it shall not be said a double assignment. But he shall assign for Error but one Error in fact, because this Error in fact shall be tried by the County, and the Errors in the Record shall be tried by the Justices.

And upon a Writ of Error the Record it self shall be removed, and not the Transcript of the Record: for upon a Transcript of a Record a man shall not assign Errors, if it be not upon a Writ of Error sued upon Transcript of a Fine, there he shall assign Errors upon the Transcript of the Note of the Fine; and if the Justices do conceive it Error, then they shall send for the note of the Fine, and shall reverse the same.

In a Writ of Error when the Record cometh in Court, if the Plaintiff all that Term do not assign his Errors; and although

37 Ass. 17.
for assign-
ment of ma-
ny Errors in
Law.

38 H. 6. 30.
Note, that
the party
assigned Er-
ror upon an
Issue, and the
Court saw
the Original
that it was
not good,
for it was ex
assignments,
where it
ought to be
ex divisions,
and there-
fore the
Court ex of
scie did a-
bate the
Writ.

though that he do assign his Errors, if he do not sue a *Scire fac. ad audiendum Errores* against the Defendant, returnable at the same Term, or the next Term; all the matter is discontinued, and the next Term he ought to sue a new writ of Error out of the Chancery, upon that Record directed to the Justices before whom the Record is removed, to proceed upon the Record *quæ coram vobis residet*.

The form to assign Errors is to put a Bill into the Court, and to say in the Bill, *in hoc erratum est*, &c. and to shew in certain in what things; and *in hoc erratum est*, and shew in certain another thing: and so of the rest in which he will assign the Errors. But to say, *in omnibus erratum est*, is not good, because of the incertainty.

A And in a Writ of Error he ought to assign his Error in proper person, and not by Attorney, where he is in Execution by force of the Judgment. And in a Writ of Error upon Judgment given in the Common Pleas, the Plaintiff cannot assign for Error, that the Justices of the Common Pleas did not give that Judgment, but the Clerks of their own heads; neither can he assign for Error, that the Jurors gave their Verdict for the Defendant, and that the Justices entered it for the Plaintiff, and gave Judgment for him: because that this assignment is contrary to that which the Court doth as Judges, &c.

C And if a man be vouched, and entreth into Warranty and loseth, he may have a Writ of Error, and assign the Errors which happened betwixt the Demandant and the Tenant, or betwixt the Demandant and the Vouchee. And so he in the Reversion who prayeth to be received upon the Default of Tenant for life, or for his faint Pleading, if he be received, and pleadeth, and loseth, he shall have a writ of Error, and assign the Error betwixt the Demandant and the Tenant, or between the Demandant and him who prayeth to be received. And if Tenant for life loseth by Default, he in the Reversion shall have a Writ of Error, although he were not received, nor prayed to be received, and shall assign for Error the matter which was betwixt the Demandant and the Tenant who lost by Default.

D A man shall assign an Error in Law as the Case is: as if the Husband and Wife levy a Fine of the Lands of the Wife unto a stranger, the Wife being within age, they shall have a Writ of Error during the Nonage of the Wife, and shall assign that for Error and that is an Error in Law of the Court. The judgment shall be reversed, and that Execution shall be awarded, or shall cease during the life of the Husband.

35 H. 6. 12.
If the Writ of Error hath longer day of return than it ought to have, the Justices of the Common Pleas may shorten this day.

5 H. 7. 3.
5 H. 7. 10.
7 H. 7. 4.
21 H. 6. 43.
[21.]

50 E. 3. Aff. the Reversion was granted to one pendant the Writ against the Lessee for life; or if the Tenant in Fee pray in aid of a stranger, *Quare* for in these cases he in the Reversion shall have Error.

50 E. 3. 5.
But *Quare* in the judgment it shall cease during

20 Aff. 2. ac. Also in a Writ of *Entrie sur Disseisin*, if the original Writ want these words in the Writ, *Quam clamat esse jus & hereditatem suam*, if the Tenant admit of the Writ, and plead to the Action, and loseth, he shall not assign this fault in the Writ, because he hath admitted the Writ to be good by his Plea. And so in a Writ of *Detinue of Charters* concerning certain Lands, if the Plaintiff in his Count do not declare the certainty of the Land in the Count, if the Defendant do admit the Count good, and pleadeth unto the Action and loseth by Judgment given in a Writ of Error sued by him, he shall not assign for Error the fault in the Count; because he hath admitted the same to be good by his Plea. *Tamen quere.*

21 E. 3. Fitz. Error 4. 7 H. 6. 39. matter in fait must be pleaded, and shall not be assigned for Error. 8 E. 4. 19. By Pigot and Choke, in Joynt tenancy, General tenancy, Misnomer, taking of Husband pendant the Writ, and the like, which prove the Writ abatable; there if the party plead other matter, and admit the Writ, he shall not have Error: *Contra* of Death or other thing, which prove the writ abated.

3 H. 5. 2. And a man shall not assign for Error a thing which is for his advantage: as to say and assign for Error that he had day, and that the day was for longer time than the common day: and so he shall not assign for Error that he was not effoined, where he ought not to be effoined, or had Aid granted unto him, where ought not to have had Aid; because these things are for his advantage.

40 E. 3. 15. vid. 21 E. 3. 46. Br. Error. 65. and Trial 35. If false Judgment be given before the Justices of the Bench of *Durham* in the County Palatine, the party grieved shall have a Writ of Error there before the same Bishop M. 14 E. 3. And if he give false Judgment, then the Writ of Error shall be sued in the Common Pleas, or in the King's Bench. shall be reversed in B. R. if there be Justices there; but by *Fortescue* it shall be reversed in Parliament, 19 H. 6. 12. Error in County Palatine shall be reversed in B. R. 21 H. 7. 33. per *Finch* Erroneous Judgment in County Palatine shall be reversed there by Commission 37 H. 6. 13. Error in Chancery reversed in Parliament. But see 14 El. Dyer. 315. That Error upon a *Scire facias* upon a Recognisance was reversed in B. R. which seemeth contrary to 37 H. 6. 13.

7 H. 4. 37. And if a false Judgment be given for the King in any Suit or Action, the party grieved shall have a writ of Error, and assign his Errors, without suing forth any *Scire facias* against the King *ad audiendum Errores*, because that the King is always present in Court; and that is the cause of the form of Entries of Suits for the King is such: Christopher Hales, *Attorn. Domini Regis, qui pro Domine Rege sequitur, &c. ven. hic*

in Cur', &c. and not, *Dom. Rex per C. H. Attorn. suum, ven. his* ^{1 H. 7. 13.}
in Cur', because that the King is always present in Court. It is said, if
 any be to
 reverse utlary in felony, when he cometh in upon the Indictment, he shall assign
 his Error before he prosecute his Writ of Error.

I Error in the King's Bench in the Process where it is the Default of the Clerks, shall be reversed in the same Court by a Writ of Error sued by the party before the same Justices: but not without suing of a Writ of Error, although it be the same Term. But in the Common Pleas, after

Vide 4 E. 4. 41. 7 H. 6. 28. *Hidebrad's*
 Case 19 H. 6. 2. 15 E. 4. 78. 37 H. 6. 17.
 per 3 Justices. If a man be utlage not-
 withstanding a *Surresedeas*, and appear
 and Plead in the Common Pleas, the utlary
 shall be reversed in the same place,
 although it be in another Term; but
 contra, if it be in another Term; but
 Defendant doth not appear and plead.

Judgment given the same Term the Justices may reverse their own Judgment upon Error in the Process, or for default of the Clerks, without any Writ of Error sued forth; but in another Term, the party ought to sue forth a writ of Error thereupon returnable into the King's Bench. But of an Error in Law which is the Default of the Justices, the same Court cannot reverse the Judgment by a writ of Error, nor with a Writ of Error, but this Error ought to be redressed in another Court before other Justices by a writ of Error.

K And he which confesseth the Demandant's Action shall have a Writ of Error to reverse that Judgment, against his Confession upon Erroneous Judgment given.

L In Plea of Land against the Tenant, and the Tenant dyeth, he who is Heir of the Tenant to that Land shall have a Writ of Error, and not he who is his Heir at the Common Law: as in Borough-English if the Tenant lose the Land by Erroneous Judgment, the youngest Son shall have the Writ of Error. And so he which is Heir unto the special tail shall have the Writ of Error, if the Land be lost by Erroneous Judgment: The Tenant may have one Writ of Error, and the Vouchee another Writ of Error upon the same Judgment; and so the Tenant, and the Vouchee by Receipt, and all depending at one time. And an Executor or Administrator shall have a Writ of Error upon a Judgment given against the Testator for Debt or Damages. And so the Heir shall have a Writ of Error to reverse an outlawry of Felony pronounced against his Father, to restore the Blood betwixt him and the Father. And if a man plead in any Action, and the Justices will not allow thereof, and the party makes his Bill upon it, and prayeth that the Justices will

^{3 H. 4. 19.}
 the Daught.
 to the tail
 brought Er-
 ror, altho'
 a Son were
 Heir at
 Common
 Law. Vid:
 1 Ma. Dyer
 29, 30.
 20 E. 3 Fitz.
 Error 2.
 11 H. 4. 65.

Seal

[22.]

Seal this Bill of his Acceptance or Plea, and if they do according as is contained in the Statute of *West. 2. cap. 3.* the party grieved shall have a Writ of Error, and may assign Error upon that Bill so sealed, and also in the Record, or in one of them at his pleasure : but this Bill ought to be sealed by the Justices before Judgment given by them, and not after, as it appeareth *An 11 H. 4. 52, 65, 92.*

Vid. 3. H. 3.
the last case,
Vid. devant
81 L.M.N.

The Successor of an Abbot, Prior, or Parson, or such bodies Corporate, shall have a Writ of Error of a Judgment given against their Predecessor ; of all things which touch the Succession or Corporation. But if a man recover against a Parson or a Bishop Debt or Damages by Judgment or Action Personal, their Executors shall have the Writ of Error upon that Judgment, and not their Successors, because that matter doth not concern the Corporation.

18 E. 3. 25.
17 Aff. 24.
Error 71. yet
the Lord by
Mccheat
shall not
have Error.
15 Aff. 2.
and so 9 E. 4.
14. that a
stranger
shall not
have Error.
6 E. 3. 7.
Fitz. Error
78.

If a man sue forth Execution erroneously against the Recognisor upon a Recognisance, the Feoffee of the Recognisor shall have a Writ of Error. If a man purchase his pardon of an Outlawry, yet he may have a Writ of Error to reverse the Outlawry. *H. 18. E. 3.* But if a man do disclaim in a *Præcipe quod reddat* of Land, and the Demandant doth recover, the Tenant shall not have a Writ of Error against his own Disclaimer : but if he plead *Non-tenure*, and the same be found against him, for which the Demandant recovereth, the Tenant shall have a Writ of Error *H. 6. E. 3.* A man condemned shall not assign Error in the process ; but in the Original Writ he may.

21 H. 7. 31.
5 E. 2. Error
89. no Error
shall be
brought
here but
upon Default
of Justice
of the Kings
Bench in
Ireland.

It is no Error to suffer one to make Attorney in an Action in which he ought not to make any Attorney.

Upon false Judgment given in the Common Pleas in *Ireland* the Writ of Error ought to be sued there ; and returnable in the Kings Bench in *Ireland* : but upon a Judgment given in the King's Bench in *Ireland*, the Writ of Error shall be sued and returned in the King's Bench in *England*.

And note that it is said, that there is no Original here, but the same remains there ; and so is 37 Aff. 5. Fitz. Aff. 328.

When the Record cometh into Court by a Writ of Error, the Plaintiff shall assign his Error, and shall have a *Scire facias* before the Record shall be entred ; for the same shall not be entred before the parties have day by the *Scire facias*.

And the Process in this Writ is *Alias* and *Pluries*, and upon that Attachment shall be awarded against the Judge who ought to return the Record, to whom the Writ was directed :

sted: and the *Pluries* may be returned into the Common Pleas, or in the Chancery, if the *Pluries* issueth to the Justices of the Common Pleas to remove the Record; and if the Writ issueth to another base Court, the *Pluries* ought to be returned into the Chancery, or into the same Court where it is made returnable. And if it be returned into the Chancery with the Record, the Chancellor himself with his own hands may put the Record into the Common Pleas without any Writ of *Mittimus* thereunto, and that as well as if he had sent a *Mittimus* with the Record.

Error in London.

NOTE that if any Erroneous Judgment be given in the Courts before the Sheriffs of London, the party grieved shall have a Writ of Error out of the Chancery directed unto the Sheriffs, to bring that Record before the Major and Aldermen in the Hustings of London, which Hustings is a Court holden before the Major, &c. And there the Record shall be examined: and if there be Error, they shall reverse the record thereby the Custom of the said City. And if the Sheriff after the Record is removed before the Major, &c. in the Hustings will award execution upon the Record against the party, the party against whom the Execution is awarded shall have a special Writ out of the Chancery directed unto the Sheriffs, that they take sufficient Sureties of the party to satisfy the King, and also the party, of that which appertaineth unto them, if the Judgment be affirmed, and that they surcease to do Execution; and if they have taken the party in Execution, that they deliver him out of Prison. And the form of the Writ is such:

A Feme Covert was received in the Common Pleas to acknowledge a deed inrolled, where they have not power to examine her without a writ, *Quare* if Error; for it is not adjudged if it be Error or not *Quare* the usage at this day. So of an Infant.

21 E. 3. 29. Br. Error 62. *vid.* 33 H. 3. That a Statute nor Deed inrolled shall not be taken by the Common Law of an Infant or Feme Covert. Contr. by the Custom of London, per 29 H. 3. 23. & 7 E. 4. 5. *Lit.*

I Rex Majori & Vic. London. salut'. Ex parte R. &c. nobis est ostensum, quod cum secundum Consuetud. in Civitate predicta, in casu quando aliquis, sive Querens sive Defendens, queritur, quod in Loq'ela que fuerat in Curia nostra coram Vic. Civitatis predictae. Errores aliqui interveni, & Record. & process. loquelarum illarum causa erroris intervenientis venire faceret in Hustings Civitatis predictae, ad Errores illos corrigendos, Vicecom. Civitatis illius execution. prioris judicij coram eis reddis. faciend. supersed. debeant, pendentibus in Hustings Recordis & processibus Loquelarum illarum indiscussarum; ac nos nuper ad prosecutionem

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nem præf. R. suggerentis Errorem in Recordo & processu Loquela, que fuit coram vobis præfat. Vic. in Curia nostra Civitatis prædictæ. per Breve nostrum, inter A. & prædictum R. de eo quod idem R. &c. intervenisse manifestum, vobis præcipimus quod Recordum & processum ejusdem coram vobis in Hustingo prædict. venire faceretis ad Errorem, si quis fuerit, corrigend' ; vos nihilominus Vicecom. (pendente in Hustingo prædict. dicta Loquela de Errore indiscussa) executionem prioris judicii fieri faciatis minus jussu, in ipsius R. dispendium non modicum & gravamen : Vobis igitur præcipimus, quod si ita sit, quod idem R. invenerit vobis sufficientem Secur. de satisfac tam. nobis, de eo quod ad nos in hac parte pertinet, quam præfat. A. de arreragiis & dampnis sibi in hac parte adjudicatis, si contigerit primum judicium affirmari, & ad faciendum ulterius & recipiend. quod Curia nostra consideraverit in hac parte ; tunc execut. prioris judicij faciendo supersedeatis, pendente in Hustingo prædict. Loquela de Errore supra dict. Et si idem R. occasione judicii illius captus sit, & in prisona nostra detentus, tunc ipsum R. a prisona illa, si occasione. prædict, & non alia, detineatur in eadem, per securitat. prædict interim deliberar. faciatis, ut dict. Loquelam suam de Errore prosequi possit. Teste, &c.

[23.]

And it appeareth by this Writ, that a man shall have an A
Action against any person in London, by Original out of the
Chancery directed unto the Sheriff of London, and that they
shall hold Plea thereof. And a man shall have the like B
Writ of Error upon a Judgment given in London before the
Sheriffs by Plaint sued there before them, without any writ
original sued, &c. And the Writ of Error shall be directed
unto the Major, and also to the Sheriffs, although that the
Judgment be given in the Sheriffs Court before them, to re-
move the Record into the Hustings to reverse it there, if,
&c. And the form of the Writ shall be thus :

Rex Majori & Vic. Lond' salutem, &c. Quia in Recordo & C
processu, ac etiam in redditione judicij Loquela que fuit in Cu-
ria nostra Civitat. prædictæ coram vobis præf. Vicecomitibus sine
Breve nostro, secundum Consuetu. ejusdem Civitatis, inter A. &
R. de quadam transgr. eidem A. per præf. R. illata ut dicitur, Er-
ror intervenit manifestus, ad grave dampnum ipsius R. sicut ex
querela sua accepimus ; Nos Errorem (si quis fuer.) modo debito
corrigi, & partibus prædict. plenam & celerem justitiam fieri
volentes in hac parte, vobis præcipimus, quod si judic' inde red-
dit. sit, tunc Record. & proc. ss. Loquela prædictæ coram vobis in
proxim. Husting. nostro ejusd. Civitatis venire, eaque in præ-
sentia partium præd. per vos præf. Vicecomites super hoc præmu-
niend', si interesse voluer', recitari, & diligenter examinari, &
Errorrem

Errorem (si quis fuerit) in hac parte modo debet corrigi. & partibus prædictis plenam & celerem justiciam inde fieri, faciatis, ut de jure & secundum Consuetudinem Civitatis prædictæ fuerit faciendum. Teste, &c.

D And the Writ of *Superfedeas* unto the Sheriff, to cease to do Execution pendant the Writ of Error, may be made and contained in the same Writ of Error which is directed unto the Major and Sheriffs to remove the Record into the Hustings.

E And if Erroneous Judgment be given in the Hustings in 34 H. 6. 48. London before the Major and the Sheriffs there, then the party who will sue to reverse the Judgment shall come into the Chancery, and there sue a Commission, directed to persons to examine the Record, and Process, and the Errors, and thereupon to do right. And the Commission shall be thus: when Error is sued upon a Judgment before the Major, it shall be at S. Martin's.

and then the Major and Aldermen shall have Forty days to be advised of their Records, and the Recorder shall record the same, *Ore tenus*.

Rex dilectis, &c. R. & S. salutem. Ex parte B. accepimus, quod in Recordo & processu, ac in redditione judicii Loquelæ quæ fuit coram Majore & Vic. Lond. in Hustingo nostro ibidem sine brevi nostro, intr. C. & præd. B. de quadam transgr. &c. illata, ut dicitur, Error intervenit manifestus: Nos, in defectu eorundem Majoris & Vicecomitum volentes Errorem illum (si quis fuerit) debito modo corrigi, & partibus inde fieri Justitiæ complementum, assignamus vos Justic. nostros, una cum ijs quos associavimus, ad præd. Record. & processum examinandum, & Errorem (si quem in eis, aut in redditione judic. Loquelæ præd. inveniri contigerit) corrigendum, & ad plenam & celerem Justiciam inde partibus faciendam, secundum Consuetudinem Civitatis præd. Et ideo vobis mandamus, quod ad certum diem, quem ad hoc provideritis, usque Sancti. Martin. magnum Lond. accedatis, & in defectu præd. Majoris & Vic. præmissa fac. in forma præd. factur. &c. secundum legem & cons. regni nostri, & Civitatis præd.; salvis, &c. Mandamus &c. eisdem Majori & Vic. quod ad certum diem, quem eis sciri fac., Record. & process. Loquelæ præd., cum omnibus ea tangentibus, & partes præd., coram vobis ad locum præd. venire fac. In cujus, &c. Teste, &c.

And upon this Commission the Justices shall award a Precept unto the Major and Sheriffs, to send the Records and Process before them at a certain day, and to warn the parties to be before the Justices at the same day, &c. And the K. shall send another Writ unto the Major and Sheriffs, to have the Record and Process before the said Justices at the day

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assigned by the Justices by their Precept made unto the Major and Sheriffs. And upon this Commission the King may make association, and another Writ *Si non omnes*, directed unto the Justices to proceed, although that some of them do not come, as he shall do in an Assise, or in Oyer and Terminer, &c.

And a man shall have a Commission to examine the Errors, and Judgment given in the Hustings in the time of another King, and in the time of another Major, and other Sheriffs; and the form of the Commission is such:

Rex dilectis, &c. Quia ex parte B. accepimus, quod in Recordo & processu, &c. [usque ibi. iustitia com. lementum] assignavimus vos tres, & d. os vestrum Justiciar. nostr', ad Recordum & processum Loquela pradiet. in presentia nunc Majoris & Vic. Civitatis pradiet', per vos super hoc pramuniend', si interesse voluerint, ad Ecclesiam sancti Martini magni Lond. supervidend. & examinand', &c. [ut supra usque ibi. Civit. t. pradiet.]. Et ideo vobis mandamus, quod ad certum diem, &c. provideritis, usque dictam Ecclesiam sancti Martini magni London. accedatis, & premissa omnia & singula fac. & explicet. in forma pradiet' factur', &c. secundum Legem & Consuetudinem Civitatis pradiet'; salvo, &c. Mandamus etiam eisdem nunc Majori & Vicecom', quod ad certum diem quem vos, &c. eis sciri fac. Record' & processum Loquela pradiet', cum omnibus ea tangentibus, quae penes ipsos resident, ut dicitur coram vobis, &c. ad locum pradiet' venire fac'; praefatisque Vic. quod i. si scire fac. praef. B. quod tunc sit ibi, Error si quis in Recordo & processu pradiet', &c. ut supra in praemissis, &c. Teste, &c.

And upon this Commission the King shall send another Writ unto the Major and Sheriffs of London, to send the Record and Process before the said Justices, &c. And the Writ in the beginning thereof shall rehearse the effect of the Record and Process, and also it shall rehearse the Commission which he hath made to be directed unto certain Justices, to examine, &c. and to do Justice thereupon: and then he shall say in the end of the Writ, *Et ideo vobis precipimus, quod ad certum diem, quem eidem R. F. & S. vel duo eorum, vobis scire fecerint, Record. & process. Loquela pradiet', cum Omnibus ea tangentibus, quae penes vos resident, ut dicitur, coram eis vel duobus eorum ad locum pradiet. venire fac', vosque praefat. Vic. scire fac. praef. A. quod tunc sit ibi, Errorum illum (si quem in Recordo & process. pradiet. aut in redditione judic. Loquela pradiet. intervenire contigerit) audiat, & ulterius factur. & receptur. quod Curia nostra consideraverit in hac parte. Et habeat, &c.*

And if a man hath Judgment given for him in London before

fore the Sheriffs in their Courts, or before the Major and Sheriffs in the Hustings of London, and the Defendant, to delay the Execution of the Judgment, sueth a Writ of Error to remove the Record before the Major, &c. and after the party Defendant who sued that Writ of Error will by subtil means convey his Goods out of the City, or otherwise waste them, to the intent that the Plainant may not have Execution of his Goods; then the Plainant who had Judgment to recover shall have a special Writ directed unto the Major and Sheriffs, that they provide that the Goods amounting unto the value of what is recovered be safely kept to satisfie the Plaintiff, if the Judgment be affirmed for him; so that Execution may be done of the first Judgment upon the same Goods.

B And if Judgment be given before the Sheriffs of London for the Plaintiff, and the Defendant sueth a Writ of Error, and removeth the same before the Major and Sheriffs in the Hustings, and when he hath removed it by a Writ of Error, if he will proceed no farther upon the Writ, &c. then the Plainant who recovered shall have a special Writ unto the Major and Sheriffs that they proceed unto the Examination of the Errors, and to do Execution, if the Judgment be affirmed. And upon that Writ he shall have an *Alias*, and a *Pluries*, *vell causam nobis significes* in the *Pluries*, if he will not proceed, &c. And this Writ was devised by *Parning* then Lord Chancellor, and by him diligently examined, as it appeareth by the Register.

C And if false Judgment be given in Ireland, the party may sue a Writ of Error in the Kings Bench in England; and the Writ shall be such:

Rex dilect. & fidel. suo A. Justic. suo Hibern', salutem. Quia in Recordo & process', &c. Error, &c. ad grave dampnum ipsius B. sicut ex gravi querela sua accepimus: Nos, &c. quod Record. & process'. Loquel. præd', cum omnibus ea tangentibus. nobis sub sigillo vestro distincte et aperte mittatis. & hoc Breve, ita quod ea habeamus tali die, &c. prout. inspect. Record. & proces. præd', ulterius inde fieri faciamus quod de jure fuerit faciend'. Et scire fac. pref. S. quod tunc sit ibi, ad procedend. in Loquela præd', & ad faciend. & recipiend. quod Curia nostra consideraverit in premiss. Teste, &c.

Error.

Rex dilecto & fideli suo I. de T. salutem. Quia in Recordo D & processu ac in redditione iudicii Loquela quæ fuit coram vobis & sociis vestris Iudic. nostris de Banco per Breve nostrum, inter A. & B. de Record. & processu Assise Novæ discessina, quæ inter eos summ. fuit & capta apud S. coram dilectis & fidelibus nostris I. de I. & sociis suis iustic', &c. Assign', de Tenementis in W. quæ quidem Recordum & process. coram vobis certis de causis venire fecimus, Error intervenit manifestus, ad grave dampnum ipsius A. sicut ex querela sua accepimus: Nos Errorem (si quis fuerit) in hac parte modo debito corrigi, & partibus prædict. iustitiam inde fieri volentes, prout decet, Vobis Mandamus, quod si iudic. inde redd. sit, tunc tam Record. & process. Loquela præd. coram vobis sic habit', quam etiam Record. & process. Assise præd. coram vobis missa, cum omnibus ea tangent', nobis sub sigill. vestro &c. ita quod ea habeamus, &c. ut his inspectis, &c.

And this Writ of Error lieth where the Assise passeth in E the County before the Justices of Assise, and afterwards it is removed into the Common Pleas, and there is Judgment given: Now the party may sue this writ of Error if there be any Error in the matter; and upon that he may have an Alias and a Pluries, if the Justices will not rectifie the Record, &c.

And if the Justices of that Bench or other Justices upon the Writ of Error will not certifie all the Record, then the party who sueth the Writ of Error may alledge diminution A of the Record, and pray a Writ unto the Justices who certified before the Record, to certifie all the Record; and the Writ shall be such:

[27] Rex dilecto & fideli suo W. de T. salut'. Cum nos nuper ad B prosecutionem I. de H. nobis suggerentis, in Record. & processu, ac etiam id redditione iudicii Loquela quæ fuit coram vobis & sociis vestris Iudic. nostris de Banco per Breve nostrum, inter W. de T. Petentem & I. de R. Tenentem, de xv. mesuagiis cum pertinent. in S. Errorem intervenisse manifestum, Vobis mandaverimus, quod si iudic. inde redditum esset, tunc Record. et processum Loquela præd. cum omnib. ea tangentibus nobis sub sigillo vestro distincte & aperte mitteretis, et Breve nostrum quod vobis inde venit, ita quod ea haberemus in Crastin. sancti Martini proxim. præterit, ubicunque tunc essemus in Anglia: Ac jam ex parte præd. I. de H. nobis est ostensum, quod licet vos prætextu Brevis nostri præd. Record. & processum præd. in aliqua sui

sui parte coram nobis ad dictum Crastin. miseritis, aliqua tamen eorumd. Record. & process. necnon quedam alia ea tangencia adhuc restant coram vobis mittend', in ipsius I. de H. dampnum non modicum & gravamen: Ideo vobis Mandamus, quod, si ita est, tunc residuum Reco d. & process. præd', necnon omnia alia ea tangencia, quæ ut præd. est restans coram vobis mittenda, nobis sub sigillo vestro distincte & aperte mittatis, & hoc Breve; ita quod ea habeamus, &c. ut ulterius in præmiss. &c.

Dedimus potestatem de Attornato faciendo.

IT seemeth that before the Statutes which gave power unto a man to make an Attorney, the Justices would not suffer that the Plaintiff or the Defendant, or the Demandant or the Tenant should make Attorney in any Action, Suit or Bill, in any Court of Record, nor in any other Court which was not a Court of Record, because the words of the Writ do command the Defendant for to appear, &c. and that was always taken to be in proper person.

The form of Entry in every action for the Plaintiff or Demandant is; *Et præd. Quer. obtulit se iiij. die, &c. et prædict. Def. non venit; ideo præceptum est Vic'; quod &c.* by which it is taken, that the Plaintiff was to appear in proper person. But now by the Statutes he may make Attorney in a Court-Baron, or other Courts; and may make Attorney for Suit Personal at the Hundred or other Court-Baron; but for Suit Real at the Leer, or at the Sheriffs Torn, he cannot do it by Attorney, but he ought to do the same in proper person. But it seemeth that the King by his Prerogative, and before the Statutes, might give warrant unto a man to make Attorney in every Action or Suit, and that as well unto the Demandant or Tenant, as unto the Plaintiff or Defendant; and that he may direct his Writs or Letters unto the Judges of Courts, commanding them to admit and receive such persons by their Attorney, and that the Judges are bound to do the same. And it seemeth one cause is, because it shall not be Error, if the Judge do admit any Plaintiff or Defendant to make Attorney in any Suit or Action in which by the Law he ought not to make Attorney: quod vide in Title of Error H. 36 E. 3. and Title Attorney T. 37 H. 6.

And if Tenant for life be impleaded in a *Præcipe quod reddat*, he in the Reversion may pray to be received to defend his right upon the Default of the Tenant, or upon his faint pleading, and there he cannot pray to be received by his Attorney. But if he bring a Writ unto the Justices out

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of the Chancery, testifying that he hath made Attorney there, and rehearse the cause whereof, that is to say, because he is sick, or other reasonable cause, and commanding them to receive such person by Attorney for him in the Reversion; the Court ought and is bound to receive him by his Attorney. And it is not material whether the cause put in the Writ be true or not, for it is not traversable, &c.

4. rer. 27 H. 8.

And the King by his Letters patents may Licence a man E to make a general Attorney in *omnibus placitis motis & movendis, & in quibuscunque Cur'*: and by his Letters Patents he may express who shall be Attorney, &c. or may grant to make Attorney whom or who he will, without naming any Attorney by his special name.

And the King by his Writ may send to any person to receive Attorney for another, such person generally as the other will name, or such persons specially; and that may be as well for the Demandant or Plaintiff, as for the Defendant or Tenant.

Register
9 Br. Attor-
ney 84. that
is intended
of the King's
Court; for
it doth not
extend to
basse Courts,
as Court-
Baron, &c.

And the King may give Authority unto one person to receive Attorney for another in all Pleas, and in all Courts, for two or three years. And the King may grant a *Dedimus potestatem* to receive Attorney for another, for a special cause recited in the Writ, because he is languishing, or lame, or decrepit, &c. or such other like special cause. Or he may grant a *Dedimus potestatem* in the generalty to receive Attorney for another in all Pleas, without expressing any cause in certain wherefore he doth so.

Vide 32 H.
6. 22.

And also it appeareth by the Register, that the King by F his Letters Patents may grant unto the Prior of St. *johns of Jerusalem*, that he may make two of his Friars, and name them, &c. in his place, which is in the place of a Proctor; that the two Friars shall make Attorney for the Prior in every Action which is pendant, or to be brought against him in any Court, &c. and for to challenge his Liberties, and for to defend them.

[26.]

And also the King by his Letters Patents may grant unto A an Abbot, for the devotion that he oweth to the House, that he may make a general Attorney for all Pleas, and in all Courts; and the said Abbot may remove him and put others in his room as often as it shall seem good and needful for him so to do: and so by this it doth appear that the King may grant unto all his Subjects to make Attorneys in the same manner, without putting or shewing any cause in the Letters Patents.

And it appeareth by the Register, that the King may E grant

grant the same as well by Letters Patents under his Privy Seal, as by Letters patents under his Great Seal.

And when the King makes a general Grant unto an Abbot, or unto any other, to make such general Attorneys, then it seems the Abbot shall come into the Chancery, or shall send his Deed under his Seal unto the Chancellor, witnessing that he hath made such and such persons his Attorneys, &c. And thereupon the Chancellor shall make Letters Patents unto the Abbot, testifying that he hath made such and such persons his Attorneys in all Pleas and Courts, and upon these Letters Patents shewed unto the Court, the Judge ought to admit and receive those persons for Attorneys for the party; and these Letters Patents shall be entred upon Record in the Chancery.

C And the King may send his Writ unto the Justices of the Common Pleas, or unto the Justices in Eyre, or other Justices whatsoever, testifying that such a one hath made his general Attorney in all Pleas and Quarrels moved against him or by him, and also to challenge his Franchises or to defend his Franchises, commanding the Justices by the Writ that they receive him for Attorney, &c.

There is another Writ also in the Register, That the King by his Writ shall command his Justices in Eyre, that they admit and receive the claim of such a one to certain liberties which he shall make and claim before them by his Attorney, because himself cannot be personally before them at the day.

D There is another form of Writ to the Justices, that they admit such a one by his Attorney, whom the said party shall make his Attorney by Letters Patents under his Seal.

And a man may make his Attorney before the Justices, without making an Attorney in Chancery, or without suing any Writ unto the Justices, commanding them to admit any Attorney for the party Plaintiff or Defendant; as the common course is at this day for an Attorney for every party to appear in every manner of Action, that they can appear by Attorney and put in their Warrants without any such Writs, if not that they be in Writs of Entry in the Post, or Writ which is by Covin between the parties, or a Writ of Right: then the Justices in discretion do not admit any man to appear as Attorney for the party Defendant, unless the Defendant do before some Justice confess him to be his Attorney, and that the Justices do record the Warrant, or otherwise that he bring a Writ out of the Chancery testifying that he hath there made Attorney,

ney, commanding them for to receive him for his Attorney.

But there are divers Cases in which the Justices will not admit the Defendant by Attorney; as if he came in by *Cepi Corpus*, they will not admit him by Attorney untill he hath pleaded some Plea, and then in discretion they use to suffer the Defendant to make Attorney, But if the Defendant come by *Cepi Corpus* upon the Exigent, the Justices will not admit him to take Attorney, but give him day by Bail from

Term to Term until the matter be determined; and that seems to be at their discretion for his contumacy, for in that case if they do admit him to make Attorney, and to go without Bail, it is no Error; as it seemeth unto me.

At the *Grand or Petit Cape* returned the Tenant may appear by Attorney, and tender to wage his Law, and take day to wage the same; at which day he ought to appear and make his Law.

And a man shall not make an Attorney against the King in any Action sued by the King.

Upon a *Rescous* returned by the Sheriff, and an *Attachement* awarded upon it against him, the Defendant shall not make Attorney; but upon his appearance shall be presently committed unto the Fleet. But if the King send a *Privy Seal* unto them commanding them that they admit Attorney for him, the Court ought to receive the Attorney without appearance in proper person.

And a man shall sue a Writ of Error by Attorney if he be not in Ward.

In an appeal the Plaintiff shall make Attorney against the Abettors, if sue against them a *Distingas*, &c.

In a *Quem redditum reddit* the Defendant shall not make Attorney but with assent of the parties.

In a *Quid juris clamat*, or *Per que servitia*, after a Plea pleaded the Defendant shall make Attorney. It seemeth likewise in a *Quem redditum reddit*.

In a *Premunire* the Defendant shall not make Attorney without a special Writ directed to the Justices.

After a *Capias ad computandum* awarded, the Defendant shall not make Attorney.

A man may demand *Conusans* of Pleas by Attorney.

The Plaintiff after appearance shall make Attorney in an Appeal by the Statute of H. 7.

He who pleads *Misnosmer* shall not make Attorney; *quod*

[27] *vide P. 41 E. 3. & M. 45 E. 3. Fitz. Attorney 52.*

In a *Scire facias* upon a Charter of Pardon, the Plaintiff

in

in the *Scire facias* shall not make Attorney, but with the assent of the other party he may.

41 E. 3. At-
torney 50.

2 R. 3. 9.

Perkins 41:

11 H. 4. 28.

Newton ac.

21 H. 7. 39.

cont.

21 E. 4. 73.

33 H. 6. 18.

29 Aff. 67.

Aff. 273.

3 H. 6. 37.

Markham.

14 H. 6. 32.

it ought to

be sued in

proper per-

son by one

of full age.

34 Aff. 5 ac.

3 H. 6. 16:

An Infant

appeared

by Gardian,

although it

be in a personal Action; but *Quare* if he can sue personal Action by *Prochein*

amy 3 H. 6. 2. Ashton.

C A Feme Covert may be Attorney for her Husband.

D At the *Sequatur sub suo periculo*, the Vouchee shall not enter into the Warranty by Attorney.

E In *Attaint* the Petit Jury shall make no Attorney.

F The Defendant shall not make an Attorney in *Maihem*.

G An Idiot shall not be received to sue or defend in any Action by Gardian, or by *prochein amy*, but ought to be always in proper person. P. 33. H. 6. f. 20.

H An Infant shall sue by *proch. amy*; but if the Infant be Defendant in any Action, he shall make his Defence by Gardian, and not by *prochein amy*. And the Court shall assign the Gardian for the Infant Defendant, and that is commonly one of the Officers of the Court. 40 E. 3. f. 16.

An Infant sued a Writ of *Waste* against his Gardian, and made Attorney in that Action, 48 E. 3. 10.

An Infant was received to sue an Action of *Debt* by his Gardian, 16 H. 7. 5.

I And a man shall not answer as Gardian unto an Infant who is Plaintiff or Defendant without a Warrant; but as *prochein amy* to an Infant he shall sue an Action without a Warrant.

K The Infant shall not remove his Gardian, nor disavow an Action sued for him by *prochein amy*. Anno 43 E. 3. Lib. Aff. et Anno 27 E. 3. Lib. Aff. 53.

L And the King by his Letters Patents may make a general Gardian for an Infant to answer for him in all Actions or Suits brought or to be brought in all manner of Courts. Or may make two or three Gardians jointly and severally to answer for him, or to bring any Action for him; and at the request of the Infant may Grant by the said Letters Patents, that the same Gardians may make other Gardians jointly or severally in their places, to sue or defend for the same Infant in all Actions and Suits which are brought or sued, or shall be brought or sued after.

M And the Infant shall have a Writ in the Chancery for to remove his Gardian directed unto the Justices, and for to receive another, &c. and the Court at their discretion may remove the Gardian, and appoint another Gardian.

3 H. 6. 16:

An Infant

appeared

by Gardian,

although it

be in a personal Action; but *Quare* if he can sue personal Action by *Prochein*

amy 3 H. 6. 2. Ashton.

N And see in the Register after the Writ of *Protection cum clausula Nolumus*, Writs directed unto the Bailies of Hund. to receive and admit such persons by Attorney in Court. to be in a personal Action; but *Quare* if he can sue personal Action by *Prochein amy* 3 H. 6. 2. Ashton.

Which

Dedimus potestatem de Attornato faciendo.

which the party will make under his Seal, or otherwise: and also Writs of *Dedimus potestatem* to remove Attorneys made, and to put others in their places, or to remove any of the Attorneys, and to put another in his place. And if a man make Attorneys in Chancery to answer and defend in other Courts, he may come in Chancery and remove him, and make others his Attorneys: and thereupon he shall have a Writ unto the Justices of the Court where the Attorney is testifying that he hath removed him, and made another his Attorney, commanding them for to receive him, &c.

3 H. 4. 18.
Feme pro-
ceeded to be
received
and plead,
which was
not by At-
torney.

21 H. 6. 48.
cont.

before 25.e.

There is a *Dedimus potestatem* granted in the Register to receive an Attorney for him who is Vouchee, because he is received for the Default of Tenant for life: and a Writ directed unto the Justices to receive an Attorney for a Woman, who prayeth to be received for the Default of her Husband, before she be received. And another Writ unto the Justices, to receive Attorney for one Defendant, and Guardian for another Defendant.

In *Quale jus* awarded, where a *Scire facias* shall be awarded against the Lord's mediate and immediate, they shall have a Writ directed to other persons to receive Attorney for them to appear to this *Quale jus* to defend their right; and upon certificate thereof in the Chancery he shall have a Writ to the Justices before whom the *Quale jus* is to be tried, to admit him who is received Attorney, and so returned in the Chancery, for Attorney for the Lords in that Action.

In Detinue, or Ward, where shall be Enterpleading, they ought to appear in proper person and enterplead, &c. And yet upon reasonable cause he may make Attorney in the Chancery, and shall have a Writ unto the Justices to receive him for his Attorney, and rehearse the cause wherefore; yet it seemeth it is not material whether the cause be true or no.

Also there is another Writ in the Register directed unto the Justices for him in the Reversion, where Tenant for life is impleaded, commanding them for to admit Attorney for him in the Reversion, if the Tenant for Life make Default, as he conceiveth he will, and testifie in the same Writ, that he in the Reversion hath made such and such his Attorneys joyntly and severally. commanding the Justices to receive them for Attorneys, because that he in the Reversion hath such an infirmity that he cannot pray to be received, in proper person. And the like Writ for a Feme Covert, who hath a Reversion, and the Tenant for life is impleaded, and

Dedimus potestatem de Attornato faciendo.

61

she conceiveth that her Husband will not pray to be received, &c. But in the Writ it shall be mentioned that the Feme is decrepit, or hath some other infirmity, that she cannot conveniently come to be received in proper person.

V There is another manner of Writ for the Sheriff, or for the Escheator, to cause the Barons of the Exchequer to admit Attorneys for them to make their proffers in the Exchequer; and yet they are commonly bound in Recognizance to do the same in proper person. And the Writ is such:

[28.]

Rex Thesaurario & Baronibus suis de Scacc. salut'. Quia dilectus nobis B. Vic. noster Suff. circa præd. ardua negotia nostra, de quibus ipsum specialit. oneravimus, in tantum est intendens, quod coram vobis ad Scaccar. nostrum ad instans Crastin. S Mich', vel ad instans Off. Pasc. proxim. futur', ad Proffum suum tunc ibidem, prout moris est, personalit. interesse non potest; Vobis mandamus, quod R. & I. Cleric', quos idem Vic. ad Proffum suum præd. coram vobis ad dictum Crast. faciend. coram nobis in Cano. nostra loco suo attornavit, vel alterum ipsorum, si ambo interesse non possint, loco ipsius Vic. ad hæc recipiat. hæc vic. de gratia nostra speciali, ipsum Vic. propter abs. suam ad diem illum, vel ad Off. præd', non molestant. in aliquo, seu gravant'. Teste, &c.

And the Escheator may have the like Writ for his proffers to make Attorney. But it seemeth this is not a Writ of course, but upon a special commandment directed unto the Chancellor by the King to make such Writ, &c. And the King may send a Writ unto the Treasurer and Barons of the Exchequer, to respit the account of the Sheriff, and of the Escheator; and the Writ shall be such:

Rex Thesaur. & Baron', &c. salut', Quia dilectus nobis W. de H. Vic. noster Wiltes', circa quadam, &c. ut supra, est intendens, quod coram vobis ad Scaccar. nostrum ad instans Crast. S. Mich. proxim. futur', ad Compotum suum de exitibus Com. præd', venire non potest; dedimus ei respect. de Compoto suo præd. reddendo usque ad Octabis S. Hilar. proxim. futur': Et ideo vobis mandamus, quod ipsum Vic. respectum illum interim habere permittatis. Teste, &c.

Pro-

Protection.

cut-f. 130 **P**rotections are in divers forms, and of divers effects, and the King may grant them for divers causes. And there are four manner of Protections with the clause *Volumus*. One is a Protection called, *Quia profecturus*. And another Protection, *Quia moratur*. And the third is a Protection which the King by his Prerogative may grant; and the same is where a man is Debtor unto the K. the K. may grant unto him that he shall not be sued nor attached, but taketh him into protection untill he hath paid the King his Debt. But now by the Statute of 25 E. 3. 19. it is ordered, That the Creditor shall have an Action against the Kings Debtor, and shall have Judgment against him notwithstanding such Protections. But he shall not have Execution against the King's Debtor who hath such Protection, unless he take upon him to pay the Debts which the King's Debtor owed unto the King; and then he shall have Judgment and Execution against the King's Debt, or for both Debts, &c.

There is another Protection *cum clausula volumus*: and that is, when the King sendeth a man in his service into the wars beyond the Seas, or into the Marches of Scotland, and there he is detained and kept Prisoner; he shall have a special Protection reciting the whole matter; and in the end of the same Protection shall be such clause: *Presentibus minime valituris post deliberationem præd. R. a prijs. præd. si conting. ipsum iterum liberari ab eadem*. And the form of divers of these Protections doth appear in the Register. But as the Law is now, every Protection cast shall not be allowed: for if the Protection be to endure for two or three years, the Justices will not allow the same; and therefore the form of the Protection at this day is to endure for one year and a day after the date thereof, and then to sue forth a new Protection if need be. And a Protection may be cast for the party by a stranger as well as by the party himself.

15 H. 6. 39. And Protection *Quia profecturus* shall not be allowed if it be presented hanging the Plea, if he be not in a voyage Royal; and a voyage Royal is, where the King goeth to the War, or his Lieutenant, or his Deputy-Lieutenant, and not otherwise.

And the Plaintiff cannot cast a Protection for the Protection is always for the Defendant, and shall be cast for him; if it be not in special Cases, where the Plaintiff becometh Defendant. But when a Protection shall be allowed;
and

and when not, appeareth more plainly in the Title of *Protection* in the great Abridgment of the years, and therefore it is not needful to shew it here.

And by the Register a man shall be by Protection when he stayeth *super salva custodia West-marchie Angl. versus Scotiam*. Yet Anno 22 E. 4. such protection was disallowed. But I am of opinion with the Register.

A Protection *Quia Moratur* upon the Sea was disallowed, Trin. 36. H. 6. because that the Sea cannot stay, and by consequence he cannot stay upon the Sea.

X And a Protection shall be allowed in a Court of Ancient Demesne, or in other Court of Record, as *London*, &c. And 7 H. 6. 21st when the Plea is removed, the Protection may be allowed: cont. if they plead. vide Plea in Trespass. 15 E. 4. 27. 4 H. 4. 4. 3 H. 4. 5. and a Protection allowed for one Defendant doth put the Plea without day for all the rest; if not that it be in special cases, as in Trespass, where they plead several Pleas, and he shall sue several *Venire facias* upon the Issue joyned against them, &c.

And a Protection shall be sometimes disallowed for variance betwixt the Writ and the Protection: But see that in the Title *Protection* in the Abridgments.

L Protection shall be allowed for an Infant, but there are divers opinions amongst the Justices, if it shall be allowed for a Feme-Covert.

M And how a Protection shall be made void, see Title *Protection*, and in the Title *Repeal* in the Abridgments.

[29.]

A There is another manner of Protection, *cum clausula Nolumus*, as appeareth in the Register: and that is, where an Abbott, or a Prior, or other Spiritual person be in fear or doubt, that his goods, or Chattels, or his Cattel shall be taken by the King's Officers for the King's service; they may purchase this manner of Protection *cum clausula Nolumus*. And by the Register appeareth, that the King may grant unto a Secular man this Writ as well as unto a Spiritual man; and if he do so, the same is good, &c.

C And a man may excuse his Default at the Grand Cape or Pety Cape by casting of a Protection.

And if a man be Essoigned of the King's service, the Plaintiff may have a special Writ directed unto the Justices to disallow of the Essoin, if he be not in the King's service, commanding them for to proceed, &c.

A And it appeareth by the Register, f. 280. that there are divers manner of forms of Protections: where a man feareth to travel the Country with his Merchandises, or to collect the Alms for the Poor of an Hospital, or of the Church, then

then they may purchase Letters Patents of the King's protection, commanding the King's Subjects for to defend them, and to maintain, aid, and assist them : and the form is such :

Rex omnibus Ballivis & fidelibus suis ad quos, &c. salutem. E Supplic. nobis A. ut cum ipse diversa negotia sua in diversis Cur. nostris, & alibi infra regnum nostr. Angliæ, prosequit. ac idem A. occasione prosecutionis huiusmodi timeat tam sibi quam hominibus & servien. suis in personis & rebus suis, per quosdam amulos suos, & eorum procuracionem, dampni, or thus, dampni. de corpore suo & iacturam de bonis suis de facili, &c. & periculum de facili posse evenire, volumus securitati sue in hac parte prospicere gratiose ; Nos pacem & tranquillitatem ubicunque in regno nostro conservare volentes, suscipimus ipsum A. et negotia sua præd. in dictis Cur. nostris, & alibi infra regnum nostrum Angliæ prosequend', ibidem morando, et exinde ad propria redeund', necnon homines et servien. suos, ac res & bon. sua quæcunque in protection. & defension. nostras speciales : Et ideo vobis mandamus, quod ipsum A. dicta negotia sua in Cur. nostris, & alibi infra regnum nostrum præd. (ut præmittitur) prosequendo, ibidem morando, & exinde ad propria redeund'. necnon homines & servien. suos, ac res & bona sua quæcunque, manuteneatis, proteg', & defendatis, non inferentes eis, seu quantum in vobis est, ab aliis inferre. permittentes injuriam, molestiam, dampnum, violentiam, impedimentum aliquod, seu gravamen. Et si quod eis forisfactum seu injuriat. fuerit, id eis sine dilatione fac. emendar' : dum tamen idem A. quicquam quod in nostri seu populi nostri præjudicium, aut contra Ordination. per Dominum E. nuper Regem Angliæ avum nostrum, & Consil. suum nuper inde fact', enervation. cedere poterit, non prosequat', aut attemptet, vel attemptare seu prosequi præsumat ullo modo. In cujus rei testimonium, &c.

And these Letters may be made and directed to Sheriffs, Admirals, Majors and all other officers, &c. And thereby it appeareth that they ought to see and provide, that such persons who have purchased such Letters, have by reason of such Letters favour and right done unto them, because it appeareth the King's will so to be, &c. And there is the like Protection for those who go with Pardons, or to make Collection for Bridges or High ways; and the like for Spiritual persons; and the like protection for Merchants strangers which go into the Country to gather their Debts ; or to sue for them, &c. There is another form of Protection, which is such :

Rem universis & singulis Vic', Escaet. Majoribus, Ballivis, &c.
Mini-

Ministris, ac omnibus fidelibus ligeis nostris quibuscunque, tam Communibus Vill. nostre de Southwark, quam aliis infra Libertates & extra, presentes Literas nostras visuris vel auditis, salutem. Sciatis, quod suscepimus in protect. nostram specialem T. W. ac homines & servien. suos, maneria, terras, & tenementa, bona & possessiones suas in London. Southwark, Hatham', & H. in com. Surr', ac in S. C. & D. in Com. K. existent', nec non hæc scripta & munimenta sua quacunq. Et ideo vobis mandamus, quod ipsum T. W. ac homines servientes, maneria, terras tenementa, bona, possessiones, literas, scripta, & munimenta præd. manuten', protegatis, & defendatis, non inferentes eis, aut eorum alicui inferr. permittentes injur', molestiam, damnum violentiam, vastum, destruct', seu domorum vel aliorum bonorum & catall. suorum incendium, seu aliud impediment. aliquod vel gravamen : Et hæc in fide, dilectione & ligeantia quibus nobis tenemini, sub gravi forisfact. nostra, nullatenus omittatis, nec aliquis vestrum omitat. In cujus, &c. per unum ann. dur'. Teste, &c.

- H And another Protection for the Prior of S. Johns, and for his Priory. &c. And those are of divers forms, as appeareth in the Title of Protection in the Register, and therefore see them there. But these Protections are by the King granted of grace : for every man who is a loyal subject is in the King's Protection ; but these Protections are granted to move and excite the Kings subjects to aid and comfort those who have such Protections, in their business which they have to do in the Countries for the causes mentioned in the Protections. And it appeareth by the Register, that every Spiritual person may sue forth a Protection for him and for his goods, and for their Fermors of their Lands for their goods, that they shall not be taken by the King's Purveyors, nor their Carriages or Chattels taken by other the King's Officers. And in appeareth by the same Protection, that King Edward in the 14. of his reign by special Statute did grant such privilege to the Clergy, whom he took into his Protection with their Goods and Carriages. And they may have a special Commission directed unto certain persons to arrest such Purveyors or Officers, and to send them before the King's Council, there to answer their misdoings in such case, and for the same Protection see the Register, f. 289.

[30.]

Writ de Droit de Advowson.

A Writ of Right of Advowson lieth only for him who hath an Estate in the Advowson to him and his Heirs in Fee-simple, or right of Estate to him and his Heirs in Fee-simple in the Advowson; and if he be disturbed to present, then he shall have the Writ. But if a man have an Advowson to him and the Heirs of his body begotten, and for default of such issue; &c. the Remainder unto him and his Heirs in Fee-simple; if he be disturbed, he shall not have this Writ, but a *Quare impedit*, because he hath not Title to the Advowson but in tail, and he ought to maintain the Action by that Title that he claimeth the possession of the Advowson, and that is of an Estate in tail. And in this Writ he ought to count of his own possession, or of the possession of his Ancestor, otherwise the Writ doth not lie, and he ought to alledge Esplees in the Parson; as in taking of gross Tithes, Oblations and Obventions unto the value of, &c. And the Tenant shall come and make defence, and may joyn the Mise by Battel, or grand Assise, &c. And see the form of the Count, and the Defence, and of joyning the Mise in the Book of *Entries*, f. 90.

39.H.6.20.a And a man who claimeth to have Fee simple in an Advowson may have a Writ *de Resto de Advocatione medietat. Ecclesie, vel tertie partis, vel quartæ partis Ecclesie, &c.*

And when a Parson sueth in the Spiritual Court for Tithes, which do amount unto the fourth part of the Advowson against the Parson of another Parish; then that Parson who is sued in the Spiritual Court may purchase a Writ which is called *Indicavit*; which Writ is a Prohibition, and shall be directed as well unto the Judge of the Court as unto the party, that they do not proceed in the Plea, &c. And then the Patron of that Parson who is so Prohibited by the *Indicavit*, may have and sue a Writ of Right of the Advowson of *Dismes*; and the form of the Writ is such:

Præcipe A. quod reddat B. Advocation. Decimarum tertie partis Ecclesie de S. vel quartæ partis, vel medietat. Ecclesie, &c.

And this Writ is founded upon the Statute of *West. 2.c.5.* in the end of the Statute, and doth not lie of a less part of the Tithes than of the fourth part of the Church. But it seemeth that at the Common Law before the Statute, a Writ of *Droit des Dismes* lay and was maintainable; as, *Præcipe quod reddat Advocationem Decimarum quintæ partis, vel sextæ*

4 E. 3. 18.
Willby
Briese 713.
& Br. Estates
65. Tenant
in tail
brought this
Writ, and
recovered
but an Estate
in tail.
24 Aff 4 Br.
tail 24. he
may have
Darrein pre-
sentment.

sexta partis Ecclesie, &c. And that by the Statute of 18 E. 3. which is: *Whereas Writs of Scire facias have been granted to warn Prelates and other Religious Clerks to answer Dismes in our Chancery, and to shew if they have any thing, or can any thing say, wherefore such Dismes ought not to be restored to the said Demandants; and to answer as well to us as to the parties of such Dismes; that such Writs from henceforth be not granted, and the Process hanging upon such Writs be annulled and repealed, and that the parties be dismissed from the secular Judges of such manner of Pleas: Saving to us our right, such as we and our Ancestours have had, and were wont to have of reason.*

F And by that appeareth, that before that Statute the right of Tithes was determined in the King's Temporal Court: but the Statute now hath altered the Law. And if a Parson be sued in the Spiritual Court for the fourth part of the Tithes, for which he purchases *Indicavit, &c.* by which the Judges do surcease; if the Patron of the Parson which sueth in the Spiritual Court hath but an Estate in tail in the Patronage, or for term of Life, he shall not have a Writ of *Droit des Dismes*, nor other remedy by the Common Law, to try the right of the Tithes, for the feebleness of the Estate. But if two be seised of an Advowson, and unto the Heirs of one of them, they shall joyn in a Writ of *Right of Advowson* for the advantage of him who hath the Fee-simple. 31 H. 6. 14.

G And also a man shall not have a Writ of *Indicavit* before 12 E. 4. 13. b. that the party hath Libelled against him in the Spiritual Court. And he ought to shew the Copy of the Libel before the *Indicavit* be granted: and the *Indicavit* doth not lie after Judgment given in the Spiritual Court.

H And a Writ of *Right de Advocatione Decimarum & Oblationum quartæ partis Ecclesie*, lieth as well as *de Advocatione Decimarum quartæ partis Ecclesie tantum*.

I If one be Parson impesonee, and another be Vicar in the same Church, and one of them be impleaded of the fourth part of the Tithes of the Parsonage, and the other impleaded of the fourth part of the Tithes of the Vicarage, they shall have several Writs of *Indicavit*, and their Patrons may have several Writs of *Right of Advowson* of the Tithes. &c. [31.]

K And it appeareth in 13 H. 6. by the opinion of *Fortescue*, that before the Writ of *Indicavit* lay of Tithes sued in the Spiritual Court, there was no Writ of *Droit des Dismes* sued thereupon. But it seemeth against reason; for the Writ of

Affise de Darrein Presentment.

Droit of Tithes lay as well for the Patron, as the *Indicavit* lay for the Parson.

And in 31 E. 1. it appeareth that a man shall have a Writ of Right *de medietate Advocationis*, where an Advowson is partable betwixt two Coparceners, and one of them is disturbed by a stranger.

But the Writ of Right *de Advocatione medietat. Ecclesie* lay where two Coparceners do present two Parsons to one Advowson, &c. As there are in some Churches two Parsons, &c.

And a Writ of Right of Advowson lieth *de Advocatione Vicarie, vel prabend, vel Capelle*, and such like, as well as *de Advocatione Ecclesie*. And the King shall have such Writ

G. d. f. 2948

as well as a common person. But a man shall not tender a Demy-mark against the King to enquire of the Seisin alleged in the King's Court, or Declaration, as he shall in case a common person bring the Writ. Neither shall a man have final Judgment against the King, although it be after the Mife joyned betwixt the King and the Tenant.

And a man shall have a Writ of Right of Advowson of a Chappel which is a Donative, as well as he shall have if it were presentable to the Ordinary.

Affise de Darrein Presentment.

THe form of the Writ of *Darrein Presentment* for a common person is such :

Rex Vic. salutem. Si A. fecerit te secur', &c. tunc sum', &c. xii. liberos & legal. homines de visn. de B. quod sint coram Justic. nostris, &c. parati Sacramento recognosc. quis Advocat. tempor. pacis presentavit ultim. Personam, quæ mortua est, ad Ecclesiam de C. vel ultim. Vicar', qui mortuus est, ad Vicar. de N. quæ vacat, ut dic', & cujus Advoc. idem A. dic. ad se pertinere ; et interim Ecclesiam illam videant. et nomina eorum imbraviari fac', & sum. B. qui Advoc. illam ei deservit, quod tunc sit ibi, audit. illam Recog'. Et habeas ibi Summ', & hoc Breve. &c. 20 E. 3. Teste, &c. But for the King the Writ is ; Rex Vic. salutem. Darrein Sum' per bonos Sum. xii. liberos, &c. and shall not say, si Rex fecerit, &c. te secur', &c. because the King shall not find Pledges to sue an Action, for he shall not be amerced, &c.

Note, that upon Quia advocat. &c. 20 E. 3. Darrein Presentment 13 per Welby, & 9 E. 2. ibid. 17 It the Affise

find Title for a stranger not named in the Writ, a Writ to the Bishop shall be awarded for him. and therefore one cannot make Title to a Presentment in time of war. 7 E. 2. *Darrein presentment.* 26 E. 3. 41. ibid. 4. ac.

†

And

G And a man shall have Assise of *Darrein Presentment*, although he nor his Ancestors do present to the last Avoidance: as if the Tenant for life, or for years, or in Dower, or by the Courtesie, suffer an Usurpation unto a Church, &c. and die, he in the Reversion, who is Heir unto the Ancestor who last presented, shall have an Assise of *Darrein Presentment*, if he be disturbed. But if a man present, and then grant the Advowson unto another for life, and he suffer one Usurpation, or two, or three Usurpations; now at the next Avoidance he in the Reversion, shall not have an Assise of *Darrein Presentment*, if he be disturbed to present. And that appeareth by the Statute of *West. 2. cap. 5.* That the remedy of the Statute is given for the Heir of him who made the Demise, who is in Reversion, and not for the Lessor himself.

was the last who presented, by that the Heir shall have a Writ to the Bishop, and yet he cannot make Title by that presentment. *Conr. in a Quare Impedit.* And *Saton* gives the reason, because he cannot convey by them. But if the Heir do alledge the last Presentment in her self, and the Assise be to her by Default, and found *ut supra* yet the Heir shall recover. *Conr.* if they be at issue upon that Presentment.

H And if a man present unto an Advowson and afterwards the Parson doth resign, or is deposed, and the Patron presents again, and is disturbed, he shall have an Assise of *Darrein Presentment*; and the form of the Writ shall be; *Quis Advocatus tempore pacis presentavit ultim. personam, que mortua est ad Ecclesiam*, &c. although that he resign, and be living. And the form of the Writ is to suppose that the Defendant doth deforce him of the Advowson, and yet by his Count he counteth that he or his Ancestors last presented unto the Advowson, by which he doth suppose that he is in possession of the Advowson; and yet the same is good.

I If a man do present unto an Advowson unto which he hath right, and afterwards the Incumbent dyeth, and a stranger usurpeth, and presenteth unto this Advowson in the time of War, and after that incumbent dyeth; now if he who hath right do present again, and be disturbed, he shall have an Assise of *Darrein presentment*, and this Presentment made in time of War by the stranger shall not grieve him.

And so if a man present unto an Advowson, and afterwards the Incumbent dyeth, and another Ordinary doth present by Lapse another incumbent, and after that Incumbent dyeth; now the right Patron shall present, and if he be disturbed, he shall have an Assise of *Darrein Presentment*, notwithstanding the mean Presentments.

And so if the Gardian do present in the right of the Heir, hath right.

Vid. 14. E. 3. *Darrein present.* 19. Berry saith that he hath seen the presentment in the name of the Heir
 20 E. 3. *ibid.* 12. *Green.* ac. 5. H. 7. 16. ac. 50. E. 3. *Holt.* contr. 14 H. 7. 12. *per Fairfax.*

Heir, and the Incumbent dyeth, the Heir shall present; and if he be disturbed, he shall have an Assise of *Darrein Presentment*, although the Guardian did present the mean and the last Presentment. But if a man present unto an Advowson, and after lease the same for term of years, and after the Church is void, and the Tenant for years doth present, &c. and then the Incumbent dyeth and the lessor presenteth, and is disturbed; it seemeth that he shall not have an Assise of *Darrein Presentment*, because the Tenant for years did present in his own Right. But Tenant for years shall have Assise of *Darrein Presentment*, if he have presented before; and so shall the Gardian of the Heir, if he have presented before.

[22.]
 35 H. 6. 60. *Mes Com* 230. *Quare.* Yet all is one descent per. 11 E. 3. Assise 87. 17 E. 3. *Darrein presentment* 9. *Shad,* she hath no other remedy but a *Quare Impedit.* *Tote ac.*

If a man usurp upon an Infant, and present, which Infant hath the Advowson by descent; and afterwards the Incumbent dyeth, the Infant shall present; and if he be disturbed, he shall have an Assise of *Darrein Presentment*. But if the Infant purchase the Advowson, and present, and afterward the Church become void, and a stranger present, and usurp upon the Infant, and then the Incumbent dyeth, the Infant presents, and is disturbed by a stranger; he shall not have a *Darrein Presentment*, but shall be put to his Writ of Right.

If the Husband and Wife present unto an Advowson in the right of the Wife, which is appendant to a Manor of the Wives, and after the Husband alien one Acre, parcel of the Mannor, with the Advowson in Fee unto a stranger, and dyeth, and the stranger presents, and alieneth the Acre unto another in Fee, saving the Advowson unto himself, and then the Church voideth; the Wife shall present; and if she be disturbed, she shall have an Assise of *Darrein Presentment*, because the Advowson was severed from the Acre: but if the Advowson were appendant to the Acre, then the Wife ought to recover the Acre before she present to the Advowson.

20 E. 2. *Day.* *Presentment* 11. and 13. but they seem to make a difference, when the disturbance is before the composition to present by turn, and when after.

And Assise of *Darrein Presentment* doth not lie for one Coparcener against the other, as appeareth M. 15 E. 3. and M. 20 E. 3.

And if one Defendant die in a *Darrein Presentment*, the Writ is good by the survivor against the other.

If a Disturber present unto an Advowson, and the Patron bring an assise of *Darrein Presentment*, and pendant the Writ the Incumbent dyeth, if the Disturber presenteth another

ther Incumbent dyeth; yet the Patron shall have an Assise of *Darrein Presentment* upon the first Disturbance against the Heir of the Disturber, per Journeys accounts: and so if the Disturber present two or three times within the six months, the very Patron shall have an Assise of *Darrein Presentment* upon the first Disturbance.

33 H. 6. 32.
The Church
never is Li-
tigious be-
twixt Par-
ceners, for
if they can-

not agree, the Ordinary ought to admit the Presentee of the eldest; but contrary of Joynt-Tenants.

D *Et provisum fuit coram Domino Rege, Archiepiscopus, Episcopis, Comitibus, & Baronibus, quod nulla Assisa ultima presentationis de cetero capiatur de Ecclesiis Præbendatis, nec de Præbendis, Hil.* This Pro-
19 H. 3. away by
Vvest. 2. 29.

Quare Impedit.

E **T**He form of the Writ of *Quare Impedit* for the King in the right of the Crown is such:

Rex Vic. Lincoln. salutem. Præcipe. W. Archiepiscopo & R. Vid. Fitz. quod permittant nos presentare idoneam Personam ad Ecclesiam de W. que vacat, & ad nostram spectat Donationem, & unde præd' W. Archiep. & R. nos injuste impediunt, ut dicitur. Et nisi, &c. præd. Archiep. & R. quod sint coram nobis, &c. vel coram Justic. nostris de Banco, &c. Na. B. 25.
Where a
man may
have an As-
sise of *Dar-
rein Present-
ment*; there

he may have a *Quare Impedit*, but not a *Contra. C.* 5. part 102. In a *Quare Imped.*
the writ *fuit ad Ecclesiam*; and the Count de *Advocatione duarum partium*.

For the King may sue this Writ, and every Writ, in what Court he will,

F And if the King hath Title to present unto an Advowson by reason of the Lands and Temporalities in his hands, of a Bishoprick, or Abbey, or Guardianship of an Heir, then the Writ is:

Rex Vic. London' salutem. Præcip. W. Archiepiscopo, quod permittat nos presentare idoneam Personam ad Ecclesiam de W. que vacat, & ad nostram spectat Donationem, ratione Episcopatus Cantuar' nuper vacant', & in manu nostra existent', & unde idem Archiep. nos injuste impedit, ut dic', &c.

And if it be unto the Prebend, then thus: *Ad Præbendam de I. in Ecclesia, &c. que vacat, &c. ratione Episcopatus, &c.* And if it be by reason of Ward, then the Writ shall be; *Que vacat, & ad nostram, &c. ratione Custod. terr. & heredis T. quondam Comitum de A. defuncti, qui de nobis tenuit in capite, & in manu nostra existentis, & unde præd', &c. nos injuste, &c.*

Quare Impedit.

And if it be by reason of Wardship by occasion of another Wardship, then the Writ is ; *Qua vacat & ad nostram, &c. ratione Custodia terr. & hered. I. T. in manum Domini E. nuper Regis Angl', Patris nostri, ratione Custod. terræ & heredis S. de C. quondam Comitis Glouc. defuncti, de quo idem I. terram suam tenuit per servitium militar', in manu ejusdem Patris nostri existent', & unde idem, &c. nos injuste impedit', ut dicitur.*

And by the Register, the King shall joyn with another person in a *Quare Impedit*; and the form of the Writ is such : *G*

Rex vic', &c. precip. R. de C. quod juste, &c. permittat nos, & P. de T. presentare idoneam Personam ad Ecclesiam de K. que vacat, & ad nostram, ratione Custod. terræ & hered. I. qua fuit uxor T. de N. qui de nobis tenuit in capite, defuncti, in manu nostra existentis, & ad ipsius P. de T. spectat Donation', & unde præd', &c. nos & præfat. P. de T. injuste im'ed.

21 E. 3. Br.

Quare Impedit.

But now the common opinion is, that the King shall have the whole Presentment alone, and alone shall have the Action. But methinks that it stands with reason that the K. and the other joyn ; as in a popular Action the party shall sue for the King and for himself, and the words of the Writ are : *Qui tam pro Domino Rege, quam pro seipso sequitur, &c.* and that in an Action of Debt, &c. and by the same reason the King may sue for himself and for the party. And the Common experience is, that a man shall hold Lands in common with the King, and also Chattels : and by the same reason they may have the Presentment or Advowson in common.

And if a man be disturbed to present unto a Parsonage, *H* then the Writ shall be ; *Prec', &c. quod permittat ipsum presentare, &c. ad Ecclesiam. &c.* for the word *Ecclesia* is always intended a Parsonage. And if it be a Vicarage, then the Writ is ; *quod permittat ipsum presentar. ad Vicar'.* And if it be a Prebend, then *ad Prebendam* ; and if a Chappel *ad Capellam* ; and so he ought to name the Advowson as it is, &c. 8 H. 6. 22.

[33.]

Co. Litt. 10. a

10. C. 136

A man shall not have a *Quare impedit de Advocat. medietatis, nec de medietat. Advocacionis, &c.* And if one man hath the Nomination unto an Advowson, and another hath the Presentation, if he name his Clerk, and he who hath the Presentation, present another Clerk ; he which hath the Nomination shall have a *Quare Impedit*, and the Writ shall be, *quod permittat ipsum presentare, &c.* and in his Count he shall set forth the special matter, and it shall be good.

And so if a man hath a Chantry, which is a Donative by Letters Patents, and he give the same unto a Clerk, who is disturbed by another, or another doth present to his Chantery,

Chantery, or giveth the same by Letters Patent ; he which hath Right shall have a *Quare Impedit* of that Donative ; 17 E. 3. 12. and the Writ shall be, *quod permittat ipsum presentare, &c. ad Cantariam, &c.* and in the Count he shall set forth the special matter.

D And if a Bishop be disturbed to present where he ought to make Collation, the Writ shall be, *quod permittat ipsum presentare, &c.* and he shall count upon the Collation.

E And so if the King be disturbed to collate by his Letters Patents unto his free Chappel, he shall have a *Quare impedit*, and the Writ shall be, *quod permittat ipsum presentare, &c. ad Prebendam* in his free Chappel, &c.

F And a *Quare impedit* lyeth of a Priory, or of an Abbey ; 14 H. 4. 36. b. and the Writ shall be, *quod permittat presentare ipsum ad Prioratum seu Abbatiam, &c.* See the Book of Entries 59.

G And there is another form of Writ, *quod permittat ipsum presentare ad Ecclesiam Domus S. Martini Bristol, qua vacat, &c.* and so of an Hospital, and the like.

H And a man shall not have a *Quare Impedit* if he cannot alledge a presentment in himself or in his Ancestors, or in another person, from whom he claimeth the Advowson, and that in his Count, if it be not in special cases: as if a man at this day erect a Church Parochial by a License of the King, or other Chantery, which shall be presentable, &c. if he be disturbed to Present to the same, he shall have a *Quare im-* ^{21 E. 4. 2. 1.} ^{16 H. 7. 8.} *pedit*, without alledging of Presentment in any person, and shall count upon the special matter. ^{Kyle ac.}

I And if a man doth recover an Advowson against another in a Writ of Right, when the Church voideth he shall present; and if he be disturbed, he shall have a *Quare Impedit*, and alledge the presentment in him against whom he recovered, without alledging any other Presentment. And a man shall have a *Quare Impedit* and alledge a Presentment by his Proctor, and it shall be good, without alledging a Presentment in himself: *quod vid. 17 E. 3.*

K And if an Abbey hath been Parson *impersonae* time out C. 2. Part 47 of mind, and afterwards the Abbey is disturbed, he of b. ac. whom the Advowson is holden shall present, and if disturbed, shall have a *Quare Impedit*, without alledging of any Presentment in the Count, but shall shew the special matter.

L If Coparceners make partition to present by turns, and so do, and afterwards the younger Sister die, her Heir within age, and in Ward to the King, and afterwards the Church void two or three times during the Nonage of the Heir, who

31 B. 3. Br.
Quare Impedit 73.

who is the King's Ward ; the King shall present, and if he be disturbed, he shall have a *Quare Impedit* alone as it appeareth *M. 22 E. 4.* But, saving the opinion of the Book, I conceive the Law to be otherwise, because the Inheritance of the presentment is several, &c. And if two Sisters be, and have an Advowson which becometh void, the eldest Sister shall have the first Presentment ; and so the Husband of the eldest Sister (if he be Tenant by the Courtesie of the Advowson) shall have the first presentment, and the Tenant in Dower shall have but the third Presentment, &c.

16 H. 7. 8.

If the King have an Advowson in Fee, which voids, and during the Avoidance the King granteth the Advowson in Fee, the King shall not present to this Avoidance : but if the King have an Advowson by reason of the Temporalities of a Bishop, and during the Avoidance the King restore the Bishop the Temporalities, yet he shall present unto the Advowson and not the Bishop for this Avoidance.

If the Heir sue his Livery and hath it, yet the King shall present unto an Advowson which became void during the time that the Advowson and Land were in the King's hands.

6. q. f. 90. 388

24 H. 8. Dier.
4 C. 3.
part 3.

50 E. 3. 26.
ac. Vid. after 34 K.

If a man be seised of an Advowson in gross or in Fee appendant unto a Mannor, and the Advowson void, and he dyeth, his Executor shall present and not the Heir, because it was a Chattel vested and severed from the Mannor. And if a man be disseised of a Mannor unto which an Advowson is appendant, and the Advowson become void, the Disseisee may present and have a *Quare Impedit*, although he hath not entred into the Mannor. But if the Bishop die, and the Advowson happen void before his death, the King shall present unto the same by reason of the Temporalities, and not the Bishop's Executors.

2 H. 4. 19.
40 E. 3. 14.
after 44. K.
143. E.

So if a man have a Mannor unto which an Advowson is appendant in Fee, and the Church void in the Fathers time, and he die, and his Heir in Ward to the King, the King shall have the Presentment.

Gardian in Socage of a Mannor unto which an Advowson is appendant, and the Church void, the Heir shall present, and not the Gardian, because he cannot account for the same.

If the King grant unto an Abbot and his Ancestors that the Monks shall have the Temporalities during the Vacation, now if the Advowson happen void during the Vacation, the Monks shall present to the same. *M. 30. E. 3.*

The Presentation to the Vicarage doth of common right appertain unto the Parson ; but he may grant the same to another by assent of the Patron and Ordinary.

The

The Heir in tail shall not have a Presentment fallen in the life of the Tenant in tail, but the Executor of Tenant in tail. So the Termer shall have the Presentment which happeneth during the Term, although he hath not presented during the Term to the Advowson, &c.

C The King may repeal his Nomination or Presentation, ^{7 H. 4. 33.} but a common person cannot so do. And the King shall ^{Dier 260.} have a Writ upon a Bishop to induct one into a Prebend ^{25 E. 3. 47.} which the King hath given unto him; and to give him a ^{Roberts de Kelsys Case.} seat in the Quire, and a place in the Chapter house.

E And a man shall have a *Quare Impedit* of an Hermitage, and a Writ to put him into Corporal possession.

F If the King recover by *Quare Impedit*, and afterwards ratifie the estate of the Incumbent; yet at the next Avoidance the King shall present, because his Recovery and Judgment for him was not executed. *T. 9 E. 3.* In a free Chapel of the King, where the Dean ought to give the Prebends, if he do not collate within six Months unto them, then the King shall present by Laps to them as Ordinary.

G If an Advowson be void by six months, at which time the King is seised of the Temporalities of the Bishoprick, the King shall present to this Advowson, as the Bishop should do; and the King shall have a *Quare Impedit* of the Sub-Deaconry of *York* which voided when the Temporalities of the Archbishoprick were in the King's hands; and the Writ shall be, *quod permittat eum presentare*: and yet the K. shall give this Sub-Deaconry by his Letters Patents.

H Where Partition is made betwixt Coparceners by License ^{31 E. 3.} of the King of an Advowson in a Court of Record, as in the Common Pleas, and afterwards the Coparcener who hath the next turn dyeth, her heir within age and in Ward to the King, and the Church void; the King shall have a *Scire facias* against the other Coparcener, &c. upon that Partition, and yet he was a stranger to the Partition.

I If two Coparceners make Partition to present by turns, ^{6 E. 3. 24.} although that one of the Coparceners do afterwards usurp ^{Imp. 39.} upon the other Coparcener, and presents in her turn, that Presentment shall not put her out of possession, but she shall have her turn when it falls again, and shall have a *Quare Impedit*, or a *Scire facias* upon the Composition if it be upon Record, if she be disturbed for to present, &c.

K If a Bishop make a Collation, and before Induction or Installation dyeth, and the King seiseth the Temporalities; ^{50 E. 3. 26.} he shall have this Presentment, because that the Church is ^{38 E. 3. 4.} not full against the King, until the Parson or Prebend be installed or inducted.

In

24 H. 3. 33. If a Parson have a Parsonage, and afterwards doth take L another Benefice without Dispensation; now the first Benefice is void, and the Patron thereof may present, for this Avoidance is called Cession.

Br. Present-
ment al
Eglise 46. If in the time of Vacation of an Abbey or Priory, a M Church happen void, which is of the Patronage of the Abbot or Prior, and a stranger doth usurp and present thereunto; this Usurpation shall not prejudice the Successor, but at the next Avoidance of the said Church he may present, and have a *Quare Impedit*; But otherwise it is if an Usurpation shall be had in the time of his Predecessor, for that shall put the Successor out of possession, if the six months be past.

If a Vicarage happen void, and before the Parson present, he is made a Bishop, &c. yet he shall present unto this Vicarage, because it was a Chattel vested in him.

The founder of a Priory shall have a *Quare Impedit* a-0 gainst the Subprior and the Covent, if they disturb him to present to an Advowson which belongeth to the House, if it void during the Vacation, where the Founder ought to have the Temporalities during the Vacation. P. 9 E. 3.

If a man traverse an Office found of a Mannor unto p which an Advowson is appendant, and upon the Traverse the King leaseth the Mannor unto him who tendred the Traverse without mentioning the Advowson, and afterwards the Church void, he who tendred the Traverse shall have the presentment, if the Traverse be found for him.

If a Feme be assigned the third part of a Mannor unto Q which an Advowson is appendant in Dower, she shall have the third presentment.

14 H. 6. 24.
N. w. son,
Feme is di-
sturbed and
taketh Hus-
band, the
Church
void, the
Husband
presents, the
same shall
vest the
right in the
Wife. If the Patron be Out-lawed in Trespass, and the Church R void, the King shall present, because of the Out-lawry.
If a Feme purchase an Advowson, and take a Husband, S and the Church void, and a stranger doth present, and the Husband suffer an Usurpation, &c. by this Usurpation the Wife shall be out of possession, after the six Months past; and she shall be put to her Writ of right of Advowson, if she have presented before; and if she have not presented, she is without recovery: But otherwise is it if the Feme shall have an Advowson by descent, or by course of inheritance.

If an Infant or a Feme Covert do not present within six T months, the Bishop may present for Lapse.

One Joyntenant or Tenant in common, shall not have V a *Quare impedit* for the Advowson which they have in common

mon, or in Joynture, if one of them present solely against his Companion. But if two Coparceners cannot agree in the presentment, the eldest Sister shall have the first presentment, and he who hath her Estate shall have the first Presentment; and if he be disturbed by the other Coparcener, she or he who hath her Estate shall have a *Quare impedit* against the other Sister; and the Coparceners and those who have their Estates shall present as Coparceners, ought to do, *scil.* the eldest first, and then the middlemost and then the third, and then the fourth, and so as they shall be of age, &c.

35 H. 8. Dy.
35. Advow-
son descends
to two Coparceners,
one of full
age, and the
other with-
in age, the
Guardian
marrieth

the eldest, the Church void, he presents in both their names, the youngest cometh of age. Some are of opinion, that if they do not agree the eldest shall present, and it shall be her turn: Others contrary. *Quare.*

X If an Infant have a Mannor unto which an Advowson is appendant, and suffereth a Usurpation when the Church becometh void, and after ward at full age grants the Mannor in Fee, and afterwards the Church become void; the Infant shall present, and not the Feoffee of the Mannor, for the Advowson was severed by the Usurpation; and yet the Infant may present to the same.

[35.]

A If the King's Tenant hath title to present unto an Advowson which is void, and the six months pass; and afterwards the Kings Tenant dyeth before the Bishop presenteth for Lapse, his Heir within age, and in Ward to the King, the Bishop shall not present for Lapse, but the King shall have this presentment, by reason of the Wardship. P. 18 E. 3.

B If Tenant in tail of a Mannor, unto which an Advowson is appendant, discontinue the Mannor in Fee with the Advowson, and after the Discontinuer granteth the Advowson unto another in Fee, and afterwards doth re-infeoff the Tenant in tail of the Mannor, who dyeth seised of the Mannor; his Heir shall present unto the Advowson when it shall happen void: and if he be disturbed, he shall have a *Quare impedit*, because he is remitted unto the Mannor, and hath not remedy to come to the Advowson.

C The Defendant in a *Quare impedit* may sue a *Quare impedit* against the Plaintiff, if his Clerk be not admitted nor instituted. And if the Plaintiffs Clerk be instituted and inducted pendant the Writ, it shall not abate the Plaintiffs Writ; but in that Case if the Defendant recover against the Plaintiff, he shall avoid the Plaintiffs Clerk; and so if the Defendants Clerk be admitted pendant the Writ against him, if the Plaintiff recover, he shall avoid the Defendants Clerk:

Clerk : But if the Clerk of the Defendant were admitted and instituted at the time of the purchase of the Writ, and the Plaintiff purchase the Writ only against the Patron, not naming the Incumbent ; although the Plaintiff recover, he shall not avoid the defendant's Clerk, because he might have named him in the *Quare Impedit*.

If a Stranger do present unto an Abbey or Priory which is eligible by the Covent, and his Clerk be instituted and inducted ; *Quare*, how this wrong may be after redressed and reformed.

20 Eliz. 11.
Have's Case,
he ought to
be inducted.

If a man have a Chappel or Chauntry which is donative by Letters Patents, and he once present unto the Ordinary his Clerk to the Chauntry, he shall never after collate, but ought to present unto the Bishop ; and if he do not present within six months, the Ordinary shall have advantage of the Lapse.

A Presentment made by a Stranger unto an Advowson which is appropriated unto an Abbey, be the Presentment in the time of Vacation, or in the time of the Abbot, is void, although that the Clerk be instituted and inducted : but if the Abbot himself present unto the Bishop's Clerk to an Advowson which is appropriate to his House, this Presentment doth disappropriate the Advowson, and make it presentable after ; and if he do not present within six months after every Avoidance, the Bishop shall present for Lapse. The Bishop ought to present his Clerk for whom it is first found by a *Jure Patronatus*.

1 H. 7. 9.
12 & 13 E.
Dy. 293. c.
237.

The Bishop shall not have the advantage to present by Lapse, where the Church doth become void by Resignation or Deprivation, without giving notice thereof to the Patron.

Dr. & Stud.
117.
12 El. Dyer
293.

Where the Bishop doth refuse the Clerk of the Patron for non-ability, or for crime, he ought for to give notice thereof to the Patron, otherwise he shall not present for Lapse ; but after the six months past, the Patron shall have a Writ to the Bishop, if the Church do remain void, and the Bishop hath not collated thereunto.

The Chancellor of *England* shall present unto all the Kings Churches which are under the sum of twenty Marks by the year, which are in the King's gift, and in the right of the Crown: But if the King hath them by any other Title, then the Chancellor shall not present unto them.

C. 10 Part,
134.
38 E. 3. 36.

The death of one Plaintiff, nor the Non-suit of one Plaintiff shall not abate the Writ, but he shall be severed.

Where an Infant hath an Advowson by descent, and the Church

Church voideth, and he who hath Title paramount doth usurp, and present unto same Church, and the six months do pass; he is remitted by this Usurpation, and the Infant out of possession, and without remedy by that Usurpation.

N If a man hath an Advowson, and the Church doth become void, and two strangers do severally present their Clerks to the Bishop to that Advowson; the Patron shall have divers *Quare Impedit*s against them, if he will, and shall have several Judgments, and shall recover several damages for their several Presentments and wrongs done.

O If a man maketh another his Proctor, to present unto all his Advowsons, and to do several things for him; if the Proctor present, as Proctor unto him, unto an Advowson unto which he hath right to present in his own right, that Presentment shall put him out of possession of the Advowson, and shall give the possession to the other. 17 E. 3. 60
Fitz. *Quare impedit* 62.

P In a *Quare Impedit* for the King, although the Defendant hath a Writ unto the Bishop against the King, the King may have a new *Quare impedit* against him of the said avoidance, and make other Title.

Q If Prior and Covent ought to chuse the Abbot, and name him to the Patron, and he to present him to the Bishop, and they chuse one for Abbot, and name him to the Patron, and the Patron doth present another to the Bishop; they may sue in the Spiritual Court for remedy, as it is said, *H. 11 E. 3. Tamen quare*; for it seemeth they are enabled to sue at the Common Law, as well as they are enabled to chuse and name the Abbot. As the Prior of *Westminster* and the Covent hath power to sue their Abbot for an Advowson, *M. 20 E. 3.* 40 E. 3. 28.
per Fortescue

If the Disturber present two or three times within the six months, yet a *Quare impedit* lieth against the Disturber upon the first presentment, if he purchase the Writ within the six months.

A Where a man doth recover in a Writ of Right of Advowson, he shall present at the next avoidance, and shall have a *Quare Impedit*, without alledging any Presentment in himself or his Ancestors, but shall declare upon the Record, or may have a *Scire facias* upon the Recovery. And so may his Heir have a *Scire facias* upon that recovery against the Heir of the other party, at the next Avoidance after the Recovery; but not after, as it seemeth. [36]
16 H. 7. 2.
per Kibla.

B If a man recover in a *Quare impedit*, he shall have a *Scire facias* against the Patron and the Incumbent who made Default, if he will sue Execution of this Recovery. 15 E. 2. fol
174.

†

If

16. H. 7. 8.
&c.

If Coparceners make Partition in the Chancery or in the Common Pleas, to present by turns, and afterwards a stranger doth usurp in their severall turns; yet after when their turns come, every of them may have a *Scire facias* upon this partition against the stranger when his turn cometh, to shew wherefore he should not present, notwithstanding the Usurpation aforesaid. But otherwise it seemeth it is if the Partition be of Record, then they shall be put to their Writ of Right by reason of this Usurpation.

If Coparceners make Composition to present by turns, and a stranger doth usurp, and presenteth in the turn of one of them, yet if they will they may joyn in a *Quare impedit* against the stranger, notwithstanding the Composition. And after Composition to present by turns, if they do present in common, they may well so do. But it seemeth by that, that the Composition is waved; for if Coparceners (where one is within age) make Composition to present by turns, and at full age they present contrary to this Partition, these Presentments shall avoid the Partition made before.

If the eldest son by the first *Venter* present, and dieth without Heir, and afterwards the Church becomes void, the younger by the second *Venter* shall not present, nor have this Advowson. But *Devon* saith, If a man hath two Daughters by divers *Venters*, and they enter and make Partition to present by turns, and one dieth without Heir, the other Sister shall be her Heir: *quod fuit concessum*. But after the Partition, if one Sister hath presented, and afterwards dieth without Heir, it seemeth her Sister of the half bloud shall not be Heir unto her.

If a man be disseised of a Mannor unto which an Advowson is appendant, and the Disseisor suffer an Usurpation by a stranger unto the Advowson, and afterwards the Disseisee doth re-enter into the Mannor; he shall present unto the Advowson when it doth become void, notwithstanding such Usurpation.

Spoliation.

There is a manner of Suit called *Spoliation*, for the Fruits of a Church, or for the Church it self, which is to be sued in the Spiritual Court, and not in the Temporal Court; and therefore there is no Writ thereof in the Register. But it is good to be known what person shall have that Suit, and against what person it will lie and for what thing he shall sue, and when he shall sue, and in what Court.

Spoliation properly lieth for an Incumbent against another Incumbent.

Incumbent, where the right of the Patronage doth not come in debate: As if a Parson be created Bishop, and hath a Dispensation to hold his Rectory, and afterwards the Patron doth present another Incumbent, who is instituted and inducted; now the Bishop shall have a *Spoliation* against that Incumbent in the Spiritual Court, because he claimeth by one Patron, and the right of the Patronage doth not come in debate. 38 H. 6. 20.
Fortescue,
26 H. 8. 3.

And so if a Parson do accept of another Benefice, for which the Patron presents another Clerk, who is instituted and inducted; now one of them may sue a *Spoliation* against the other, and then it shall come in debate whether he hath Plurality or not. But if a Patron do present a Clerk unto an Advowson, who is instituted and inducted, and afterwards another man doth present another Clerk to the same Advowson, who is also instituted and inducted; there one of them shall not have a *Spoliation* against the other, if he disturb him of the Church, or to take the fruits thereof, because the right of the Patronage doth come in debate in the Spiritual Court, which of the Patrons hath right for to present: and therefore in that case, if one of them sue a *Spoliation* against the other, he shall have a Prohibition unto the Spiritual Court, and no Consultation shall be granted for the cause before said. See after
51. 1.

And if one Clerk without any Presentation, Institution, or Induction, do cast another Parson out of his Rectory, and taketh the Profits thereof, the Parson shall not have a *Spoliation* against him, but an Action of Trespass; or an Assise of *Novel disseisin*; for *Spoliation* doth not lie, if not against him who cometh to the Possession of a Benefice, or unto the fruits thereof, by the course of the Spiritual Law, *scil.* by Institution, &c. so that he have colour to have it, and to be Parson by the Spiritual Law. 38 H. 6. 19.
Markham:
26 H. 8. 3.
22 H. 6. 27.

K So if a Prebend happen void, and the Bishop collate thereunto, and before induction the Bishop die, and the Temporalities come unto the King, and afterwards he is inducted, and afterwards the King giveth the same by his Letters Patents unto another Clerk, who is instituted and inducted; the first Clerk shall have a *Spoliation* in the Spiritual Court against the Presentee of the King, because the King ought to have removed him by *Quare Impedit*, and not to have collated as he did. And there the Patronage doth come in debate.

If an Abbot have a Mannor unto which an Advowson is appendant in Fee, and he doth appropriate the Advowson [37]

L

to

M. 44. E. 3. to him and his Successors, and afterwards leaseth the Manor for one thousand years, and also the Advowson, and the Lessee makes an Union of the Parsonage and the Vicarage, and presents the Vicar unto the Ordinary as Parson, &c. by reason whereof the Abbot sueth a *Spoliation* against the Vicar, and the Vicar sueth a Prohibition; the Abbot shall not have a Consultation upon the matter shewed. By which it appeareth, that a *Spoliation* doth not lie for the Abbot in this case; for that the right of the Patronage doth not come in debate:

38 H. 6. 19, 20. And so if an Abbot be Parson imparsoned, and a stranger present his Clerk to that Advowson, who is instituted and inducted; the Abbot shall not have a *Spoliation* against the Clerk, but an Action of Trespass or Assise, if he be ousted; because the Right of the Parsonage is to be tried.

And if a Clerk obtain a Benefice by provision, for which cause the King is to have the Presentment for that time, because the very Patron did not present within the time limited him by the Statute of 25 E. 3. and the King presents to the Church his Clerk to the Ordinary; who is instituted, and before Induction takes the profits; he who is in by provision shall not have a *Spoliation* against him because he doth not come to the possession of the Church by the Spiritual Law, but as an Intruder and Trespassor. But if the Presentee of the King were inducted, then there is no remedy for him who hath the Benefice by provision.

A Clerk had a Collation by the King unto a Chappel, and was put into possession by the Sheriff, and afterwards the Clerk was ousted by a Prior, &c. in that case he shall not have a *Spoliation*, but an assise or Trespass, &c.

But it appeareth by the Register, that one Parson shall have a *Spoliation* against another Parson, which have divers Patrons, &c. if he be spoiled of any Tithes or Profits appertaining to his Church, which do not amount to the fourth part of the value of the Church, as before is said. But if they do amount unto the fourth part of the Church, then one Parson shall not have a *Spoliation* against another Parson, if they claim not of one Patronage, so that the Title of the Patronage doth not come in debate; and then he shall have a *Spoliation*; and if the other sue a Prohibition, &c. he shall have a Consultation.

Ne admittas.

F **T**His Writ of *Ne admittas* lyeth for the Plaintiff in a *Quare impedit*: and the same is where one hath an Action depending in the Common Pleas of *Darrein Presentment*, or of *Quare Impedit*, and he supposeth that the Bishop will admit the Clerk of the Defendant pendant the Plea betwixt them; and he may sue this Writ directed to the Bishop. And this Writ ought to be sued within the six Months after the Avoidance; for after the six Months he shall not have this Writ, because that then the Bishop may present for Lapse; and therefore it is in vain then for to sue this Writ, because that the Title to present is then devolved unto the Bishop: but the King may sue this Writ after the six Months, where he hath a *Quare Impedit* depending, or Assise de *Darrein Presentment*, because that *Nullum tempus occurrit Regi*.

Nota. In Marrow 8. reading it is holden that the six Months shall not be accounted by 28 days, but according to the Caiender-Months.

But there is a Rule in the Register thus, *Notandum est, quando Rex presentat ut in jure Corona, tunc incurrit ei tempus*. But that is not Law at this day.

And the Writ of *Ne admittas* for the King is such:

G *Rex venerabili in Christo Patri W. eadem gratia Winton, Episc, salutem. Prohibemus vobis, ne admittatis Personam ad Ecclesiam de I. que vacat, ut dicitur, & de cujus Advocacione content. mota est in Curia nostra inter nos & A. Or thus, inter A. & B. donec discussum fuerit in eadem Curia, utrum ad nos an ad pref. A. Or thus, in eadem Curia ad quem eorum pertineat ejusdem Ecclesie Advocac': Or thus, inter nos, ratione Abbacie de S. vacantis, & in manu nostra existentis, & H. Linc. Episc, donec discussum fuerit in eadem Curia nostra, utrum ad nos ratione Vacationis prad', an ad prefat. Episc. pertineat ejusdem Ecclesie Advocac'.*

H And it seemeth that the Defendant may sue this Writ as well as the Plaintiff, if the Defendant do suppose that the Bishop will admit the Clerk of the Plaintiff pendant the Writ. And this Writ of *Ne admittas* doth not lie, if the Plea be not depending in the Kings Court by *Quare Impedit* or Assise of *Darrein Presentment*. And therefore there is a Writ in the Register directed unto the chief Justice of the Common Pleas, to certifie the King in the Chancery, if there be any Pleas depending before him and his Companions by Writ betwixt such and such persons. &c. And therefore it seemeth the Writ of *Ne admittas* shall not be granted, before the King be certified in the Chancery, that such Pleas

of *Quare Impedit* or *Darrein Presentment* be there depending in the Common Pleas. But yet the Writ of *Ne admittas* may be granted out of the Chancery, directed unto the Bishop, that he do not admit, &c. before the King be certified in the Chancery, that such Plea of *Quare Impedit*, or *Darrein Presentment* is depending in the Common Pleas, then the party grieved may require the chief Justice to certifie the King in his Chancery, that no such plea is depending there, and thereupon the party Grieved shall have such Writ :

[38] *Rex venerabili in Christo Patri, &c. Licet nos per Breve nostrum vobis prohibuimus, ne admitteretis Personam ad Ecclesiam de I. [ut in Brevi de ne admittas] quia tamen per certificationem dilecti, &c. I. de S. nobis constat, quod nullum placitum pendet in Curia præd. coram ipso & sociis suis Justic. nostris de Banco inter nos & præf. W. de Advocatione præd., Vobis mandamus, quod id quod ad Offic. vestrum in hac parte noveritis pertinere, libere executiatis, Prohibitione nostra præd. non obstante. Teste, &c.*

And when the Bishop himself is party and disturber, then the form of the Writ of *Ne admittas* is as afore said ; *Prohibemus vobis, ne admittatis.* Yet the form of the Writ used to be, *Prohibemus vobis, ne conferatis Clericum Ecclesie, &c. quæ vacat, &c.*

Breve Episcopo ad admittendum Clericum.

7 H. 8. 32.

8 H. 4. 22.

A Writ shall issue to the Metropolitan, if the Bish. be party. *Quare*, for the Bish. did disclaim as Patron in 8 H. 4.

In a *Quare Impedit* the Defendant disclaims, there the Plaintiff

shall have a Writ to the Bish. contr. in disclaimer in a Writ of Right of Advowson: 6 E. 3. 7. Error 78. The reason is, because he cannot remove his Clerk after the six Months past.

IF a man do recover his Presentation in the Common Pleas against the Bishop, then he may have a Writ to the same Bishop to admit his Clerk, or unto the Metropolitan; and the Writ shall be such :

Rex venerabili in Christo Patri, &c. Cum Prior de I. &c. in Curia nostra recuperasset versus nos Presentationem suam ad Vicariam de W. Vobis mandamus, quod ad presentac. ipsius Prioris ad præd. Vicariam idoneam Personam admittatis, &c.

And if a man recover against another than the Bishop, then the Writ which shall be made to the Bishop, shall be thus :

Rex, &c. Cum Prior, &c. in Curia nostra, &c. recuperasset versus I. P. &c. Vobis mandamus, quod non obstante Reclam. præd. I. P. ad Presentac. præd. Prioris, &c. idoneam Personam admittatis, &c. And upon that he shall have an *Alias* and a *Pluries*, if the Bishop do not Execute the Writ, and an Attachment against the Bishop, if need be.

- D But if the King do recover in the Common Pleas any Prebendary, or Sub-deanry, or Dignity against the Bishop, and giveth the same by his Letters Patents unto another Clerk; the Clerk shall shew the Letters Patents in the Common Pleas, and thereupon shall have a Writ unto the Bishop to admit him, and to induct him. And if the Clerk die before he be admitted and inducted, and the King giveth the same by other Letters Patents unto another Clerk; that Clerk shall have a Writ out of the Chancery, directed unto the Justices of the Common Pleas, reciting the Recovery, and how that the other Clerk died before he was admitted, and how that he hath granted the same to this Clerk by his Letters Patents, commanding the Justices, that they send another Writ to the Bishop, that he admit this Clerk, notwithstanding the King's Collation before made unto the other Clerk.
- E In a *Quare Impedit* betwixt two Stangers, if there doth appear to the Court a Title for the King, they shall award a Writ unto the Bishop for the King. 11 H. 4. 71.
Hank and Hill.
- F If a man do recover an Advowson, and the six Months pass, yet if the Church be void, the Patron may pray a Writ unto the Bishop, and shall have it; and if the Church be void when the Writ cometh to the Bishop, the Bishop is bound to admit his Clerk. And in reason the same Law is, if the Patron after the six Months present unto the Bishop, if the Church be then void, the Bishop is bound to admit his Clerk. 21 E. 4. 3.
14 H. 4. 11.
Hankford.
31 H. 6. 15.
Cont. where there is fault in the Court,
- G And a *Quare Impedit* shall be sued against a Sub-Prior, &c. for disturbance of the Patron. *Tunit.* 31 E. 1.
- H Where the Writ abateth for form or false Latin, the Defendant shall not have a Writ to the Bishop. If the Patron who is Defendant make Default at the Distress, and the Incumbent abate the Writ by Plea, a Writ unto the Bishop shall not be awarded for the Patron, because he made default. 7 H. 6. 15.
per Curiam:
E contra, if the Patron had appeared, and the Incumbent
- made Default, in 7 H. 6. 37. 14 H. 4. 16. upon Pleas of the Incumbent, a Writ awarded to the Bishop.
- I In a *Quare Impedit* against the Bishop and others, all made Default but the Bishop, and the Plaintiff had not a Writ unto the Bishop against the others, until he had counted against the Bishop. 10 H. 6. 4. f.

33 H. 6. i. If the Plaintiff be Non-suit, the Defendant shall not have K
 22 H. 6. 44. a Writ unto the Bishop, before he hath made Title to the
 1 H. 7. 13. Advowson.
 31 H. 6. 14. 34 H. 6. 44. 11 H. 6. 8. Note: And there the Writ was brought by two
 Coparceners against the third, and others.

Vvint. 9 H. 6. Where the Defendant claimeth the Advowson as Par-L
 16. per Curiam; the Plaintiff shall not have a Writ to the Bishop.

Where the Writ abateth for *Misnom'*, or for insufficien-M
 cy: the Defendant shall not have a Writ to the Bishop.

If the Defendant do not appear at the Distress returned N
 insufficient against him, the Plaintiff shall have a Writ to the Bishop,
 Plea. without making Title.

21 H. 6. 36. If the Sheriff return upon a *Quare Impedit, quod querens* O
 Aid.

33 H. 6. i. *non invenit Pleg'*, then the Plaintiff may find pledges in the
 Common Pleas, and shall have a new *Quare Impedit*, in the
 Common Pleas; and if the Sheriff return upon that Writ
tarde, and the Defendant appear, and the Plaintiff be cal-
 led and appeareth not, the Defendant shall not have a Writ
 to the Bishop, because that no Writ is served against the De-
 fendant.

Where the Plaintiff recovereth by Verdict in a *Quare P*
Impedit, and it is found by the same Verdict that the six
 Months are past, and that the Metropolitan hath presen-
 ted, whereas the Ordinary ought to have presented, &c.
 and that the year is now past, &c. yet the Plaintiff shall have
 a Writ to the Bishop.

7 H. 4. 37. If a man recover against a Bishop, he may have a Writ Q
 to the same Bishop, or unto his Vicar-general, if he be out
 of the Realm, or unto the Metropolitan.

A man sued divers *Quare Impedit*s against the Bishop, and R
 he was Non-suit in all but one Writ; the Defendant had
 not a Writ to the Bishop until that Writ was determined.

5 H. 4. i. In a *Quare Impedit* the Defendant pleaded to issue, and S
 after made default, and a Writ was awarded unto the Bi-
 shop for the Plaintiff.

At the *Disfringas* returned against the Defendant, he T
 comes, and hath day by the prayer of the parties, and af-
 terward makes Default; the Plaintiff shall not have a Writ
 [39.] to the Bishop, but a new *Disfringas*.

In a *Quare Impedit*, the Defendant maketh Title for him-A
 self and others, and afterwards the Plaintiff is Non-suit; a
 Writ to the Bishop shall be awarded for the Defendant on-
 ly, and not for the others.

As

B At the Distress returned against two, one appeareth, and the other maketh Default; the Plaintiff shall have a Writ to the Bishop against him who made Default; and yet it may be that the other Defendant may bar the Plaintiff; and it is so used at this day: but the contrary was adjudged. *H. 7. 19.* & *7 H. 6. 15.*

C In a *Darrein Presentment* betwixt two Strangers, the Assise found a Title for another Stranger; who was not party to the Writ; he shall have a Writ awarded to the Bishop for him, although he were not party to the Writ, because that the Writ is, *Quis advocatus ult. presentaverit, &c.*

D Where a man hath a *Quare Impedit* against one, and the Defendant hath a *Darrein Presentment* against the Plaintiff, and recovereth in the *Darrein Presentment*, and the Plaintiff is Non-suit in the *Quare Impedit*, the Defendant shall have two Judgments against the Plaintiff, to have a Writ unto the Bishop in both Actions; and two Writs shall be awarded to enquire of the damages; but he shall not render double damages for one Disturbance.

E When a man sueth a *Quare Impedit* against another, and after pendant the Suit he sueth *Ne admittas* to the Bishop, &c. and afterwards they agree to present in common by turns to that Advowson; then he shall have a special Writ out of the Chancery unto the Bishop, to admit him who ought, by the Accord and Composition, to present at the first turn to that avoidance. But first the King ought to send a *Certiorari* unto the Justices of the Common Pleas, to certify in the Chancery of the Accord there; and upon that Certificate the King shall send his Writ unto the Bishop, to admit his Clerk who by the Accord ought to have the first Presentment and turn. And the form of the Writ in the Register is such:

F *Rex venerabili, &c. Cum nuper vobis per Breve nostrum prohibuerimus, ne admitteretis Personam, &c. ejusdem tertiae partis Advocac. ac postmodum, ad prosecutionem ipsorum E. & M. nobis suggerent, inter eos concordatum fuisse sub hac forma, quod praed. E. hac vice presentaret Clericum suum ad dict. tertiam partem, & praedict. M. in proxim. Vacation. sequens Clericum suum presentabit, sicut per quaedam scripta indentata inter eos confecta, & sigillis suis consignata, & coram nobis in Cancellaria nostra ostensa, plene liquet; ipsosque penes vos prosecuti fuisse, petend. cum instantia, ut Clericum ipsius E. hac vice ad dictam tertiam partem admitteretis, juxta formam concordiae praedictae. Vos tamen, asserent. manus vestras pretextu Prohibitionis nostrae praedictae. ligatas, Clericum ipsius E. admittere recusasse; & nobis supplicante,*

supplicant, ut sibi, ne collatio tertiæ partis præd. ad vos per Lapsum temporis, quæ in proximo, ut dicitur, imminebit, hac vice devolvatur, velimus de congrua appositione remedii in hac parte facer. provideri; mandaverimus dilecto & fideli nostro R. de N. quod ipse cognitiones quas præfati E. & M. coram ipso facere velint, utrum viz. ipsi super jure Præsentandi ad tertiam partem concordati essent in forma præd., & si præd. M. vellet quod Clericus per ipsum E. ad eand. 3. partem præsentatus hac vice admitteret, ad eandem reciperet, & si dicta Scripta essent Facta ipsorum E. & M. & nos inde in Cancellaria nostra sub sigillo vestro distincte & aperte redderet certiores: Et quia præf. R. nos ad mandatum nostrum certificavit, quod Concord. est inter præf. E. & M. quod præd. E. hac instante Vacatione præsentabit Clericum suum ad dictam tertiam partem, & præd. M. in proxim. Vacatione sequen., & sic præd. E. & M. & hered. sui ad tertiam partem præd. alternatim Imperpetuum præsentabunt; & quod ad Conventionem illam firmiter observand. Scripta præd. inter partes præd. sunt confecta: Vobis mandamus, quod idoneam Personam ad. præd. tertiam partem ad præsentat. præfat. E. hac vice admittatis, & ulterius quod vestro incumbit officio in hac parte (Prohibitione nostra præd. non obstante.) Teste, &c.

By this Writ it seemeth a man shall have a *Quare Impedit* quod permittat ipsum præsentare ad tertiam partem Ecclesiæ; and it seemeth to stand with reason: for a Consolidation may be made of three Advowsons, and every Patron to present by turn, and then every one hath right but to a third part.

Prohibition and Inhibition.

There are divers manners of Prohibitions and Inhibitions, and they may be directed as well unto the Temporal Court as unto the Spiritual Court. And one Writ in the Register is, where a man sueth a *Præcipe in capite* against another in the Common Pleas, of Lands or Tenements which are not holden of the King, but of another Lord; then the Lord of whom the Lands are so holden may sue this Writ directed to the Justices of the Common Pleas, commanding them that if it do appear unto them that the Lands are not holden of the King. &c. but immediately of another, that they do not meddle with the Conusance of that Plea, but that they bid the party sue his Writ of Right Patent, *si sibi videris expedire*. And in a Writ of Right, if the Tenant vouch a Foreiner to Warranty, the Tenant shall have a Writ of *Superfedeas* directed to the Bailies of the same Court, to surcease the Plea, until

until the Warranty be determined ; and if the Bailies will not surcease for that Writ, then the Tenant shall have another Writ of Inhibition directed unto the Sheriff, that he go unto the said Court ; and to inhibit the Bailies, that they do not proceed in the Plea until the Warranty be determined, &c. And if they will not surcease for that Writ, then the Tenant shall have Attachment against the Bailies, directed unto the Sheriff, returnable in the Common Pleas, or King's Bench.

A A Prohibition may be directed unto the Sheriff at the suit of the Tenant, that he do not hold Plea in a Writ of Right unless Batrel shall be thereupon waged, because that the Tenant hath put himself upon the grand Assise.

B And a man may have a Writ of Prohibition directed unto the Sheriff, to go unto the Lord's Court, and to inhibit the Bailies, that they do not hold Plea in the Lord's Court of a House, &c. *inter A. Petentem & B. Tenentem*. And he may have another Writ unto the Sheriff, to prohibit the Lord himself, that he do not hold the Plea, &c.

C And also the Tenant may have another Prohibition directed to the Sheriff, to prohibit the Bailies of the Bishoprick of the Hundred of F. that they do not hold Plea in the said Hundred *inter A. Pet. & B. Ten. de Consuetudinibus & servitiis quas idem A. de eo exigit de liber. Tenem.*, quod de eo tenet in I. nisi Duellum inde vadiat. fuerit ; because the said B. hath put himself upon the Grand Assise, &c. And if Tenant by Receipt sue such a Prohibition, the Writ ought to make mention of the Receipt.

D Where the Bishop holdeth Plea of an Advowson, or of the fourth part, or of the third part thereof, then the party shall have a Writ of Prohibition directed unto the Bishop himself, in this form :

Rex vener. in Christo Patri A. eadem gratia Episcopo Winton', & ejus Offic. ac eorum Commiss. salutem Prohibemus vobis, ne ten. Placitum in Cur. Christianitat. de Advocat. Ecclesie de N. vel medietat'. vel tertiae partis, vel quartae partis Ecclesie de N. unde S. & F. querunt quod R. trahit eos in Placitum coram vobis, &c. And he may have a Prohibition to the Party himself *Ne sequatur*, by these words ; *Prohibemus tibi, ne sequaris Placitum in Curia Christianitatis de Advocac'*, &c. *unde C. queritur quod tu trahis eum in Cur'*. &c. And he may have an Attachment thereupon against him, if he follow it after the Writ cometh unto him.

And

Prohibition.

And the King for himself may sue forth this Writ, although the Plea in the Spiritual Court be betwixt two common persons, because the Suit is in derogation of his Crown.

And the King may sue an Attachment upon the same, if they do proceed, &c. And in the time of Vacation of a Bishoprick, the Prohibition shall be directed unto the Guardian of the Spiritualties, *& ejus Officiali & Commissariis.* And a Prohibition lieth for Chauntries, Chappels, Prebends, and Vicarages, &c.

If a man sueth another in the Spiritual Court for a Chatel or Debt, the Defendant shall have a Prohibition, and the Writ shall be; *Prohibemus vobis, ne ten. Placitum in Curia Christianitatis de Catallis vel debitis,* &c. And he may have a Writ unto the party himself, that he shall not sue there, &c. and shall have an Attachment thereupon, if they sue there afterwards, &c. And also the King may sue this Writ, and it may be directed unto the Judge and Party. And the King may have an Attachment upon it.

If a man sueth another in the Spiritual Court for a Lay fee, which is Land or Tenements, or the like, then he shall have a Prohibition, and the Writ shall be; *Prohibemus vobis, &c. ne teneatis, &c. de Laico feodo Regis in S. unde queritur quod H. trahit eum in Placitum,* &c. And he may have another Writ unto the party himself, &c. *Ne sequatur,* &c. and he may sue an Attachment upon it; and he may sue an Attachment only against the party, or against the Judge only, or against both, at the Election of the party who will sue. And if the Judge do dwell in one County, and the party in another County, then if he will have an Attachment against both, he must sue forth several Writs. And so it seemeth if he sue several Prohibitions against them, he ought to sue several Attachments against them, if he will sue both, although they be dwelling in one County.

And a man shall have an Attachment upon a Prohibition against the Judge, if he refuse to receive the Prohibition, and to admit of it.

And a Prohibition lyeth, if a man be sued in the Spiritual Court for the Collation unto a Grammar School. If a man sue for Trespass in the Spiritual Court, the King or the party shall have a Prohibition and Attachment, as before is shewed, unto the Judge, or party, or unto them both.

Vid. 11 H. 4.
47. by which
it seemeth
a Spiritual
thing. 7 H.
4. 1.

Prohibition.

91

N In some cases a man shall have a Prohibition when he is sued in the Spiritual Court for the Tithes of his Lands. As if a man be the Kings Tenant, and holdeth of him in chief by Knights Service, and is sued in the Spiritual Court for the Tithes of the Demean Lands he shall have a prohibition, because that these Lands may come into the King's hands by reason of Wardship, or by Escheat; and then perhaps the King shall be otherwise charged than he ought to be charged and therefore the same ought to be tried before the King in his Chancery.

And so, if a Bishop grant unto a Presentee in the Church of Lincoln the Tithes of his Demean Lands, to him and his Successors; now if the presentor be impleaded in the Spiritual Court for these Tithes, the King may grant a prohibition; and the form is such:

Rex tali Judic' salutem, &c. Monstravit nobis venerabil. Pater Linc. Episcopus, quod cum I. Present. in Ecclesia beate Mariæ Linc', teneat de dono suo omnes Decim. Dominicarum terrarum suarum vel Dominici sui de N. quas id. Episc. & predecess. sui Episc. loci prædicti conferr. consueverunt, Prior Sanctæ Katherine extra Lincoln' clamans Decimas illas pertinere ad Ecclesiam de B. trahit eum inde in placit m, &c. Et quia præd. Placitum tangit Coronam & dignitatem nostram, præsertim cum Collatio earund. Decimar. ad nos possit depolui ratione Custodia vel Escacet. quia etiam consimiles Decimas conferimus in quibusd. Dominicis, & similit. quamplures Magnates regni nostri in Dominicis suis; vobis prohibemus, &c.

[4r]

A Also a man may sue a prohibition directed unto the Sheriff, that the Sheriff do not suffer the King's Lay Subjects to come to any place at the Citation of the Bishop, *ad faciend. aliquas Recognitiones, vel Sacram. præstand', nisi in causis matrimonialibus & Testamentariis.* And the party may have thereupon an Attachment against the Bishop, if he cite or distrain any one to appear before him to take an Oath at the will of the Bishop, against the will of him who is so summoned or cited. And by that it appeareth, that those general Citations which Bishops make to Cite men to appear before them *Pro salute animæ*, without expressing any cause, are against the Law, and the party may have an Attachment against the Bishop for the same, and may sue a Prohibition so to do. And if he do express any cause in the Citation, it seemeth by the Writ before, that it ought to be for some Matrimonial or Testamentary cause.

See 50. N.

B If a man doth acknowledge in the Spiritual Court that he oweth

oweth another man one hundred pound to pay to him at a day certain, and after doth not pay the same, &c. if he be sued in the spiritual Court for this Debt, he shall thereupon have a Prohibition : and so if he acknowledge in the Spiritual Court, that he ought to pay to such a one 100 Marks at such a day, &c. he shall not be sued in the Spiritual Court for that Debt ; and if he be, he shall have a Prohibition and Attachment thereupon. But if a man, by reason of Marriage, or of a Will, doth acknowledge in the Spiritual Court that he ought to pay 100 Marks or any other Sum at a certain day ; then if he do not pay it according to his acknowledgment, he may be sued in the Spiritual Court for the same, and a Prohibition will not lie.

*Vide 22 Aff.
70 Thorpe.*

And if a man do acknowledge in the Spiritual Court to pay a certain Debt at a certain day, and doth not pay it at the day, for which the other sueth him in the Spiritual Court, and excommunicateth him there, because he did not pay it at the day ; the other party shall have a Prohibition against him.

If a man do recover a Debt in the Spiritual Court against another, and after sueth there to have Execution ; the party grieved shall have a Prohibition against the party and the Judge, and an Attachment upon the same.

If a man be indebted unto the King, or bounden to render an Account unto him, and after his Executors are sued in the Spiritual Court for a Debt which doth not concern Matrimony or Testament ; his Executors shall have a Prohibition against the Judge, &c. rehearsing the special matter, &c.

Where an Abbot, or Bishop, or other person whatsoever, sueth in the Spiritual Court, because he taketh Toll, or other Composition or Custom of his Tenants, &c. there the Party grieved shall have a Prohibition against him ; or the King may sue this Prohibition and Attachment thereupon.

*Vide Br. Pre-
scription
609;*

Where a man granteth parcel of his Mannor to another Parson in Fee, to be quit of Tithes by Deed, and the Parson with the assent of the Ordinary grants unto him, that he shall be quit of Tithes of his Mannor for this parcel of Land, &c. if he or his assignee be afterwards impleaded in the Spiritual Court for Tithes of his Mannor, or any parcel of his Mannor, he or his Assignee shall have a Prohibition upon that Deed : and if the Deed were made before time of memory, and so had continued to be quitted of Tithes of his

his Mannor, he shall have a Prohibition, if he be impleaded for the Tithes of that Mannor, or any parcel thereof, upon the matter shewed.

H If a man sue any Prohibition to any Spiritual Court, and the Judges will not receive the same, or will not allow it, and because he bringeth the Prohibition, they make a Citation against the party, to answer before them for the same cause; now he shall have a new Prohibition upon the matter directed unto the Judges there, &c. And also he shall have an Attachment thereupon, if they proceed against him in their Court. And it is not material whether the Prohibition were sued legally or erroneously, because he shall not be punished for suing a Prohibition in the King's Court.

I A man deviseth Lands in *London* in Mortmain, and by reason of this Devise the Abbot, or he to whom the Devise is made, sueth for these Lands, or for any parcel thereof, in the Spiritual Court by Colour of the Devise: the party grieved by this Suit shall have a Prohibition.

K If a man sue another in the King's Court in Trespass for Battery, or taking of his Goods, and afterwards is Non-suit, and discontinueth the Suit, for which the Defendant sueth him in the Spiritual Court for Defamation, &c. he who hath sued in the Temporal Court shall have a Prohibition against him, and an Attachment thereupon, if he sue again in the Spiritual Court; and also shall have such Prohibition unto the Judge, and Attachment against him, if he hold Plea therein after the Prohibition delivered unto him.

L Where a Composition is made by deed indented at the time of the Avoidance of a Prior, that an Abbot shall nominate six persons, and that the other shall elect one of them to be Prior unto the Ordinary; now if he who presenteth be sued in the spiritual Court, because he hath presented one unto the Ordinary for to be Prior, he shall thereupon have a Prohibition against him who sueth there. And if the Sub-prior and Covent sue in the Spiritual Court to avoid such Presentment, he shall have a Prohibition against the Judge, &c.

[42.]

A And also the King may have a Prohibition directed unto the Ordinary, that he shall not visit the Hospitals which are of the King's Foundation, or of the Foundation of his Predecessors, because that the Chancellor of *England* ought for to visit them and no other. And so is it of the King's or his Progenitors free Chappels, no Ordinary shall visit them, but the Chancellor of *England*, &c.

Where

6 H. 7. 14.
 Keble, vide
 3 Aff. 29.
 Br. Affize
 288.

Where a common person is the Founder of an Hospital, B which is donative by his Letters Patents, and doth consist all in Temporalties, if the Ordinary will visit such Hospital, the Founder shall have a Prohibition against him; or if the Ordinary will cite any of the Poor men to appear before him for an Hospital cause, or to remove him, the Founder, or his Heir, shall have a Prohibition. And such Hospital may be appendant unto a Mannor, as well as the Advowson of a Church.

And if a man recover his Presentation by *Quare Impe-* C
dit, and hath his Clerk admitted and instituted, and another person who claimeth the Advowson by provision from the Pope sueth in the Spiritual Court, for to avoid and remove the other Clerk; the Patron who hath recovered his Presentment, &c. shall have a Prohibition unto the Judge for to surcease, &c.

So if the King hath Title to present unto an Advowson, D by reason of a Ward who is in the Kings hands, and after the six Months past presenteth his Clerk, who is admitted and instituted, and the Bishop present his Clerk before to the same Church for Lapse, who was admitted and instituted, &c. by reason whereof the Bishops Clerk sueth the Clerk, who was presented by the King in the Spiritual Court; the King's Clerk shall have a Prohibition directed unto the Judges, &c. that they shall not proceed in the Plea, &c.

See the Sta-
 tute 9 E. 2.
 Articuli
 Cleri.

If a man sueth a Priest or a Monk, or Canon, or Clerk, E in the Temporal Law, in Debt or Trespass, and cause him to be arrested by his Body; if they sue for his Arrest a Citation in the Spiritual Court *de violenta manuum injectione in Clericum*, the other shall have a Prohibition directed unto the Judge.

If two men are sworn to give Evidence unto a Jury, and F do so, for which certain persons are indicted; if they who are indicted suethem in the spiritual Court who gave evidence for Defamation, they shall have a Prohibition.

Where a man sueth in the Spiritual Court for Spiritual G causes, and the Defendant purchaseth a Prohibition directed unto the Judges there, and delivers the same, and for so doing the Judges do Excommunicate him for the offence he did to the Church, in bringing a Prohibition to them upon a Spiritual Cause; the party Excommunicate shall have a new Prohibition upon that matter, commanding them for to revoke the same. For a man shall not be punished for suing forth Writs in the Kings Courts, whether he have right or wrong.

H If a Clerk of the Chancery, or any of his Servants, or the Keeper of the Great Seal, or any of his Servants, or the Chancellor, or any of his Servants, be Sued in London before the Major or Sheriff for Trespas, they shall have a *Supersedeas* directed unto the Major for to surcease, and bid the party sue in the Chancery, if it be needful for him. *Vide 4 H. 3.* And there are divers forms of these Writs in the Register; *Prohib 15.* and one Writ reciteth, that this Custom and Priviledge *Vid. 43. D.* was confirmed by Authority of Parliament *Anno 18 E. 3.*

I If a Woman hath Title to sue a *Cui in vita*, and she swear unto the Tenant, that she will not sue the *Cui in vita* *11 H. 4. 28.* against him; if she afterwards sueth forth the Writ, for which the Tenant sueth her in the Spiritual Court for breach of her Oath, she shall have a Prohibition, because the Oath toucheth a Temporal things, *viz. Land.*

K If two several Patrons present severally to the Bishop, and thereupon one sueth a *Quare Impedit* or a *Darrein Presentment* against the other, and recovereth, and hath his Clerk admitted, for which the other Clerk sueth the Clerk who recovereth by Appeal or otherwise, in the Archbishops Court, because that he was not admitted at the presentment of his Patron; the Patron who recovereth shall have a Prohibition directed unto the Archbishop, &c. or against the Clerk that sueth there for that cause, that he do not sue for that Cause, &c.

L And so is it if the Patron be disturbed by the presentment of a Stranger, and the Disturbers Clerk sueth the very Patrons Clerk in the Spiritual Court; or contrary, the Clerk of the rightful Patron sueth the Clerk of the Disturber in the Spiritual Court, he who is grieved shall have a Prohibition.

M And if the King do collate unto any Prebendary, or recovereth the Collation unto any Prebendary, and hath his Clerk admitted, and afterwards the Clerk who is vexed sueth in the Spiritual Court, by means of Appellation, or Commission, or other cause, by which the Title of the Collation may come in debate; the King shall have a Prohibition directed unto the Judges where the Suit is, commanding them that they do not proceed. And if the King do recover his Collation or Presentation unto any Church, and after Execution of the Judgment is disturbed by Appeals, or Citations, or other such means; or if that after the Clerk be inducted, the Kings Clerk be vexed by Appeals, or Commissions, or Citations in the Spiritual Court for this cause; then the King shall have a Writ, directed unto

Prohibition.

unto all Sheriffs, Majors, and other Officers, to take and arrest the Bodies of those who made such impediments, to disturb the Execution of the Judgment, or of such Presentations or Collations made by the King; and also shall have a Writ of Prohibition unto the Bishops and their Officers, that they do not any thing in derogation of his Presentment or Collation, or of the Execution of the Judgment given for the King. And also the King may sue such Prohibition directed unto the party himself who sueth such Appeals, Provocations, Citations, Instruments, or Process, &c. that they do not sue such, or permit such Appellations, Provocations, or Impediments to be. And the King shall have Attachment upon that directed unto the Sheriff, &c. if the party follow or suffer such, &c. to be sued contrary to that Prohibition.

If the King do recover his Presentment unto a Church, A and hath a Writ unto the Bishop, &c. to remove the others Incumbent, for which the Incumbent sueth an Appeal in the Archbishop's Court, &c. by reason whereof the Archbishop sendeth a Prohibition that he do not admit the King's Clerk pendant the Appeal, &c. then the King shall have a Writ directed unto the Archbishop and his Officers to take off his Inhibition, and that they do nothing, nor suffer any thing to be done by others, in derogation of the Crown or of the King's right; and shall have another Writ against the Incumbent, that he follow not such Appeals, Provocations, or other Process or Impediments. And also the King may have an Attachment directed unto the Sheriff against such Incumbent, if he go on there after such Prohibition directed unto him.

And it appeareth by the Register, that another common B person who recovereth his presentment, or hath title to present, shall have such Writs of Prohibition unto the Spiritual Judges, or the party, that they shall not proceed, or pursue such, &c. and also Attachment against them if they do, &c. And where the King's Clerk is in possession by such recovery, and is after disturbed by another with force and arms, that he cannot take the Tithes and profits of the Church, he shall then have a special Commission directed unto the Sheriff, and other the King's Officers, to take such persons, as well within Liberties as without, and to carry them unto the Goal, there to remain till they have other command from the King.

And if the King do recover his Presentment, and hath a Writ unto the Bishop, and his Clerk is instituted and inducted

ducted ; if the Bishop at the Suit of others hath Provocations, or other Instruments, to cite the King's Incumbent to the Court of *Rome*, or elsewhere out of the Kingdom ; then the King shall have a Prohibition directed unto the Bishop, that he do not cite, nor cause to be cited, such Incumbent, &c. and the King may have an Attachment upon it, if, &c. And it seems that the King shall have a prohibition without any Recovery had before, if his Presentee be instituted, &c. And so it seems a common person shall have and sue such a Prohibition, when the Suit is to try the Title of the Presentment or Collation ; yet the Writs in the Register are and speak of a Recovery.

D If a man make oath to infeof me before such a day, &c. 11 H. 4. 83. if he do not infeof me, I cannot sue him in the Spiritual Court for breach of his oath, because the thing which is to be done is a Temporal act, and shall be tried at the Common Law, whether he hath done it or not ; and therefore if he be sued in the Spiritual Court for that Cause, he shall have a Prohibition. And if a man be sued in the Spi- 11 H. 4. 83. contrary for personal things. 4 H. 3. Prohibition 15. Sec 42 F. 2 E. 4. 10.

E ritual Court, and the Judges there will not grant unto the Defendant the Copy of the Libel, then he shall have a Pro- 4 E. 4. 37. hibition directed unto them for to surcease, &c. until they have delivered the Copy of the Libel, according unto the Statute made *Anno 2 H. 5.* And also the Defendant may have an Action against them upon the said Statute, if they will not deliver the Copy of the Libel, whether the cause in the Libel be a Spiritual cause or not.

F If a man maketh a Devise of Lands or Tenements devisable 37 H. 6. 9: the party to whom the Devise is made shall not sue in the Spiritual Court to have the Lands or Tenements so devised ; 46 E. 3. 32. 8 H. 8. Prohibition 19. but if he do, the other party shall have a Prohibition. But if he deviseth Goods or Chattels Real, as a Term for years, or a Ward ; there he may sue in the Spiritual Court for such things.

G If a man sueth in the Common Pleas for Trespass, if he sue him in the Spiritual Court for the same cause, he may shew the matter in the Common Pleas, and shall have a Prohibition from thence directed to the Judges, &c. And so always when the matter is depending in the Common Pleas, if he sue for the same cause in the Spiritual Court he shall have a Prohibition out of the Common Pleas. 13 H. 6. Prohibition 3. 4 E. 4. 37. 38 H. 6. 14.

H But a man shall have a Prohibition out of the Chancery or Kings Bench upon his Surmise surmising that he is sued in the Spiritual Court for a Temporal Cause, &c. although he be not sued in the King's Bench, or other where, for that cause. 31 H. 8. Br. Prohibition 17.

M

H

If a man sue a *Quare Impedit*, and deliver it of Record, I
as he may, and afterward the Defendant, or his Clerk, sue
2 E. 4. 11. a Citation against the Presentee of the Plaintiff; the Plain-
Vide tiff in the *Quare Impedit* shall have a Prohibition in the
13 H. 8. 5. Common Pleas, before the return of the Writ of *Quare im-
pedit*, because it appeareth on Record that such a *Quare
impedit* is depending.

If a Parson grant to one by Deed, that he shall be dis- K
charged of Tithes of his Lands, and afterwards he sueth in
the Spiritual Court for the Tithes, &c. it is said that he
[44.] shall not have a Prohibition, because he may pretend this
matter in the Spiritual Court, to discharge him of the Tithes.
But if it were upon a Composition made before time of me-
mory, and now the Parson sueth for the Tithes of those
Lands, there he shall have a Prohibition against the Parson,
&c. *Quare* the diversity, for I think he shall have a Prohi-
bition in both cases. The case is M. 8 E. 4. 14.

Vide Com. If a man promise one 10 l. if he will marry his Daugh- A
350. & 309. ter; if he marry the Daughter, and the other will not pay
37 H. 6. 8. the money, he shall not sue for the same in the Spiritual
45 E. 3. 24. Court. But if he promise one with his Daughter in marri-
Vide 50 S. age 10 l. &c. if he doth marry the Daughter, and he do not
22 Aff. 70. pay the money, he may sue in the Spiritual Court for the
17 E. 44. 10 l. because it concerneth Matrimony. Which diversity
15 H. 3. see in 22 E. 3. lib. Aff.
Prohib. 22.
16 H. 3.
ibid. 24.

If the Testator charge his Executors to pay his Debts to B
his Creditors, if they do not pay them, the Creditors may
sue in the Spiritual Court; and they shall not have a Prohi-
bition, for that this Charge of the Testator is as a Devise
unto his Creditors: *quod vide* H. 9 E. 3. Prohibition 17.

13 H. 3. If a man giveth Goods in Marriage with his Daughter, C
Prohib. 21. and afterwards they are Divorced; the Wife may sue in the
Vide 139. Spiritual Court for the Goods, and no Prohibition will
lie thereof.

If a Stranger do disturb the Executors to perform the D
Will, they may sue him in the Spiritual Court, and no Prohi-
bition lieth against them for so doing T. 4. H. 3. Prohibit. 28. acc.

4 E. 3. 27, 29. If a man sueth a Prohibition because another draweth
Prohib. 2. him into the Spiritual Court for an Advowson of a Church,
&c. upon the Attachment upon the Prohibition sued he may
declare, that he did force him of great and small Tithes,
&c.

If one Parson sueth another Parson in the Spiritual Court
for Tithes of the profits arising in one hundred Acres of
Lands within the bounds and limits of his Parish being,
for

for which the Patron of the other Parson purchaseth an *Indicavit* unto the Spiritual Judge for to surcease, &c. then may the Parson who sueth in the Spiritual Court come into the Chancery, and have a Writ unto the Bishop for to enquire of the value of the Church, according to the Tax of Tithes now currant, as upon the value of the Tithes demanded, and to certifie the King in the Chancery thereof by Letters under his Seal, with the Writ: and it seemeth he ought so to do before he have a Consultation granted in that case.

G If a Bishop will cite or compel the King's Chaplains, or the Masters of the Chancery, which are the King's Chaplains, to make their personal Residence upon their Benefices when they are Attendants in the Kings service, they may have a Prohibition unto the Bishop, &c. and upon the same an *Alias*, *Pluries*, and Attachment. But if they be not attending in the Kings service, then the Ordinary may compel them to make personal Residence upon their Benefices; and the form of the Writ is such:

Rex venerabili, &c. Cum Clerici nostri ad faciend. in Beneficiis suis Residentiam personaliter, dum in nostris immorant. obsequiis, compellari alias, super hoc molestari seu inquietari non debeant; Nos, ac Progenitores nostri quond. Reges Angl', hujusmodi Libertat. & Privileg. pro Clericis nostris a tempore quo non extat memoria semper hactenus usi sumus, vobis mandamus, quod dilect. Clericum nostrum, Personam Ecclesie de B. &c. qua per precept. nostrum in Cancell. nostra nostris jugit. intendit obsequiis, ad personalem Residentiam in Benefic. suo, &c. dum in eisdem obsequiis nostris immorat', nullatenus compellatis, &c.

And if the Kings Chaplain be chosen Dean of any Church, which Office requireth personal attendance and residence, and the Bishop will compel him to take the Deanry which requireth that personal Residence, by Spiritual Censures and Citations, &c. then he shall have a Prohibition unto the Bishop by these words: *Vobis district. prohibemus, ne ipsum A. ad Residentiam aliquam in Benefic. suo faciend', seu assumend. officium præd', vel aliquod hujusmodi Residentiam requir', dum obsequiis nostris præd. sic intenderit, quoquo modo compellatis; & sequestr', si quod in fructibus aut alijs bonis Ecclesie dicti Clerici nostri per ipsum Episcopum aut suos ea occasione appositum fuer', sine dilatione sat. relaxari, &c.* And so if the Clerk abide in the Kings service in the Company of our beloved and trusty R. of P. in the parts of Gascony.

And so if the Bishop will amerce the Kings Chaplains, and compel them to pay a certain sum of money for Non-residence, they shall have a Prohibition,

Statut. If one sue another out of the Realm for Debt, or other cause, whereof the Kings Court may have consuſance, he shall have a Prohibition against him, and an Attachment upon the same, if, &c. And so if one Clerk sueth another upon the Title of Collation of any Prebendary out of the Realm, &c. he may have this Prohibition: and the King may send a Writ to him who is so sued out of the Realm, commanding him upon pain of forfeiture of so much as he may forfeit, that he go not out of the Realm for to answer thereunto, whereof the consuſance doth appertain unto the King's Court. And also the King may send unto the Prebend, if he be sued out of the Realm for Title of the Prebendary, to prohibit him, upon pain of Imprisonment, and of forfeiture of what he may forfeit, that he do not go out of the Realm, nor answer there by his Proctor, or otherwise, &c.

And if any man do purchase from the Court of *Rome* any Citation against any Clerk, or others, directed unto the Archbishop of *Canterbury*, or unto others, to cite such persons to appear before the Pope, &c. and to answer for the Collation or Presentation unto any Benefice or Prebendary; then the King shall send his Writ of Prohibition unto the Archbishop, or other to whom such process is directed, that they do not cite, &c. and may have another Prohibition to the party himself, and an attachment upon the same, &c.

And when a Consultation is once duly granted, then the Court may proceed in the Spiritual Court, notwithstanding that the party purchase a new Prohibition directed unto them, if the Libel be not changed: *quod vide* by the Statute of 50. E. 3. c. 4.

The Writ of Prohibition which is called *Indicavit* most commonly lieth between four Persons, whereof two are Patrons, and two are Clerks, and properly lieth where one Clerk sueth another in the Spiritual Court for Tithes which do amount unto the fourth part of the value of the Church at the least; for if it doth not amount unto the value of the fourth part, but unto the fifth part, the *Indicavit* doth not lie. And this Writ lieth for the Patron, and that Clerk who is sued in the Spiritual Court: and this Writ may be sued as well against the Judge as the Party. And the King may sue this Writ where his Clerk is impleaded for Tithes amounting to the value of the fourth part of the Church, or of the Church it self. And this Writ of *Indicavit* lieth as well for the Patron, where his Clerk is impleaded for the Advowson it self, or such Vicarage, Prebend, or Chappel, as well as if he were impleaded of

the Tithes of the Church, Vicarage, Prebend, or Chappel.

And it appeareth by the Register, the Writ of *Indicavit* which the King shall have where the Clerk is impleaded in the Spiritual Court for Tithes, not making mention what is the value of the fourth part, is such :

Rex Officiali Episcopi, &c. & ejus Commissariis salutem : Cum A. de B. Persona Ecclesie de W. teneat omnes Decimas provenientes de Marisco, &c. de Advocatione nostra, Abbas de Bello, clamans eas pertinere ad Ecclesiam suam de, &c. trahit cum in Placit', &c. Vobis, rohibemus, &c. utrum ad nos an ad pred' Abbat. pertinet earundem Decimarum Advocatio, quia Placita, &c. And this Writ of *Indicavit* ought to be sued by the Patron before Judgment given in the Spiritual Court, for after Judgment given there the *Indicavit* is void.

C And a man shall not have an *Indicavit* before the party in the Spiritual Court hath libelled there against the Defendant ; and the party who sueth the *Indicavit* ought to shew the Copy of the Libel in the Chancery, before he have the *Indicavit*. And when the party hath libelled in the Spiritual Court, and the party is put to answer, then it is called and said, that the Suit is contested in the Court of Christianity.

D And *Indicavit* lieth for Tithes and Offerings, if Suit be in the Spiritual Court for them, as well as it lieth of an Advowson ; and that for a common person, as well as for the King. And the Writ of *Indicavit* shall not mention that the Tithes and Offerings which are in suit do amount unto the fourth part of the Church, but *Decimas provenientes de centum acris terre*, or of such a Mannor : and if these Tithes be not to the fourth part of the value of the Advowson, the other party may alledge and surmise the same, and have a Consultation.

E And also *Indicavit* lieth where one party is Parson imparsoned, and the Clerk of the other Patron sueth him in the Spiritual Court for Tithes, &c. he may sue the *Indicavit*. And so if an Abbot be Parson imparsoned of a Church, and another Abbot is Parson imparsoned of another Advowson, and one sueth the other for Tithes appertaining to his Advowson, amounting unto the fourth part of a Church, &c. the other shall have the *Indicavit* against him.

And if an Abbot be Parson imparsoned of an Advowson, and hath a Vicar endowed ; then if the Parson be sued in the Spiritual Court for the fourth part of the Tithes of his Parsonage, he shall have an *Indicavit*. And so if the Vicar be sued for the fourth part of the Tithes and Offerings of his

Vicarage, the Parson, or he who is Patron of the Vicarage, shall have the *Indicavit*, because they are several Advowsons; the Parsonage one, and the Vicarage another; and there may be divers Patrons of them. *Quod vide Pasch. 31 H. 6. in Title indicavit.*

If Bailies, Majors, or others, who claim Jurisdiction to arrest a man upon a plaint before them, or to Attach his Goods, &c. do arrest one for Trespass or Contract who was not within their Jurisdiction the party arrested, &c. shall have a Prohibition directed unto them, &c. and the form is such:

Rex Ballivis A. de N. salutem. Cum de Communi consilio regni nostri provisum sit, quod non liceat alicui de eod. regno, nisi nobis, & ministris nostris specialem auctoritatem ad hoc habentibus, aliquos per Ballivam seu potestatem suam transeuntes attachiar', ad respondendum alicui super contract', conventionibus, seu transgr. aliquis extra eand. Ball. seu potestat. factis; Vobis precipimus, quod non attachiatis B. ad respondend. alicui coram vobis in Ball. vestra super hujusmodi contractibus; conventionibus, seu transgr', contra formam provision. prad'; & Districcion', si quam inde feceritis, deliberari faciatis, &c. And if they will not obey the same, he shall have an Attachment against the Bailies. And this Writ lieth as well upon Attachment of Goods, as for arresting of the Body.

[46.]

If a Woman have Lands which she holdeth in Dower, or of joyn purchase with her husband, or of her own inheritance, if the Sheriff have process out of the Exchequer to levy the Husbands Debts which he oweth unto the King; or if the Sheriff have process out of another Court to levy Debts due by her Husband to another person; if the Sheriff will distrain in the Lands which the Wife holdeth, &c. the Wife shall have a Writ unto the Sheriff, that he do not distrain the Wife who holdeth such Lands, in the same Lands, for the Debt of the Husband; and the form of the Writ is such:

Rex Vic', &c. Cum secund, Legem & consuetud. regni nostri mulieres in Terris & Tenementis quas tenent in dotem de dono virorum suorum, vel qua sunt de hereditate sua, vel quas sibi acquisiverunt, pro debitis virorum suorum reddend. distringi non debeant; ac tu B. quæ fuit uxor A. distring. in Terris & Tenementis suis, quas tenet in dotem ex dono ejusd. A. & etiam quæ fuer. de hereditate ipsius B. ac ex quæsito ipsius B. sicut ex gravi querela sua accepimus: Tibi precipimus, quod ipsam B. in Terris & Tenementis suis quas tenet in dotem, vel quæ sunt de hereditate sua propria, vel ex quæsit. ipsius B. pro debitis. prad. A. quondam viri sui, reddend. non distringas, vel distringi fac',

contra

*contra Legem & consuetud. prædict; & Distractionem, si quam-
&c.*

And there is such a Writ unto the Sheriff, where process cometh unto the Sheriff out of the Exchequer, to levy the Debts of the Husband, *per summ. Scaccarii, &c.* And in that case he may sue a Writ unto the Barons of the Exchequer, that they surcease to make out such process to the Sheriff to distrain the Wife in such Lands, &c. Another form of Writ unto the Barons of the Exchequer, to surcease for to distrain the Wife, &c. and with a proviso in the same Writ, that they levy the Debts of the Husbands Executors, or of his Heir, or of the Lands and Tenements which were the Husbands, &c.

A And if a man sue another in the County-Court for Debts or Chattels which do amount to the sum of 40s. then the party shall have a Prohibition against him who is Sheriff, that he shall not hold Plea thereof, and that he tell the party that he sue in the Common Pleas; and the Writ is such:

Rex Vic', &c. Cum Placita de catallis & debitis quæ summam quadraginta solidor. attingunt, vel eam excedunt, secundum Legem & consuetud. regni nostri sine Breui nostr. placitari non debent; ac A. B. de debit. centum solid. in Com. tuo sine Breui nostro implacitavit, ut accepimus: Tibi præcipimus; quod si ita sit, tunc Placito illo in Com. præd. sine Breui nostr. ulterius tenend. supersed. omnino, & præf. A. dicas ex parte nostra, quod Breve nostrum de prædict. debit. versus præd. B. sibi impetret, si sibi viderit expedire. Teste, &c. And if such Writ be sued in another Court, then the writ shall be directed unto the Baili of the Court, in such form:

Rex Ballivis I. de N. vel Ball. suis de N. salutem. Cum Placita &c. [usque ibi, non debeant] ac. A B. de eo, quod idem B. redd. præf. A. catall. ad valentiam decem librar. coram nobis in Curia dicti Dom. vestri de N. vel in Curia nostra de N. sine Breui nostro implacitet, ut accepimus; Vobis præcipimus, quod si ita sit, tunc Placito illo, &c. ut supra. And if they do not surcease upon this Writ, then he shall have an *Alias* and *Pluries*, and Attachment against them, and also an Attachment against the party himself.

And if a man do owe unto another man five Marks, and he sue several plaints for the same in the County-Court or in any other Court against the Debtor, he shall have a Prohibition thereof, and rehearse the matter, and that he would defraud the King's Court of its Jurisdiction, and also the party of his answer, &c. commanding them that they do not proceed, &c. and that he command the party to sue at the Common Law in the King's Court; and if they will not

surcease, he shall have an *Alias* and *Pluries* and Attachment upon the same, &c.

And so it is if a man will sue in the County-Court a Writ of Covenant or Trespass, unto his damage of forty shillings or more, the party shall have a Prohibition for to surcease, and thereupon an *Alias*, *Pluries* and *Attachment*, &c.

And so if the Executor sueth in the County, or in a Court-Baron, for a Debt of five Marks by divers Plaints, whereas the Debt is upon a Contract, or upon an Obligation; now the Defendant may shew the same, and plead unto the Jurisdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do surcease, &c. and if he have Judgment in any of the Plaints sued for parcel of the Debt, yet in the Prohibition he may prohibit him in the Plaints which are depending, and that Execution of the Judgment cease for the residue.

And also if a man sue in the County a plaint of twenty pounds, and hath Judgment to recover in that Court; yet the Defendant may sue a Prohibition, commanding the Sheriff and the Suitors that they do not execute the Judgment, although he have before admitted the Jurisdiction.

And so after Judgment given and Execution awarded in the County, or in other Court-Baron, which hath not power to hold Plea of Debt of the sum of forty shillings, &c. or of Damages in Trespass amounting to such sum, or more, the party Defendant shall have a Writ of Prohibition unto the Bailiffs, or unto the Sheriff or Officer of the Court, that they do not Execution; and if they have distrained the party to make satisfaction, that then they release the Distress, and that they revoke what they have done therein.

There is a Rule in the Register thus: *Si Placita de catallis vel debitis que summam quadraginta solidorum attingunt, vel eam excedunt, in Com', vel in alia Curia, sine Breui placitent, quod absit, non fiat inde Breve de falso iudicio, nec Recordare, nec Breve de Executione Iudicij; exceptis Cur. Civitatum, & aliis, que secundum Consuetud. huiusmodi Jurisdictiones habent, &c.* A

[47.]

And if a man sueth another in the County or other Court upon a Plaint of Trespass *Vi & Armis*; the Defendant may sue a Prohibition unto the Sheriff, or unto the *Vi & Armis* Bailiff, in such form: B

1 E. 4. 15:
Justices li-
eth without
Vi & Armis
Littleton.

Rex Bailivis de B, &c. Cum Placita de transgr. contra pacem nostram in regno nostro Angl' vi & armis factis, secundum Legem & consuet. ejusd. regni, sine Breui nostro placitar. non debeant, ac W. implacitar. coram vobis in Cur. predict. Domini vestri

vestri R. de T. de diversis transgr. eidem W. per præfat. R. contra pacem nostram, vi & armis (ut dicit.) factis, ut accepimus, in ipsius W. grave dampnum, & contra Legem & consuet. præd': Vobis præcipimus, quod si ita sit, tunc Placita prædicta coram vobis alterius tenenda supers. omnino præf. W. dicentes ex parte nostra, quod Breve nostrum de Transgr. præd. versus præfat. R. sibi impetret, si sibi viderit expedire. Teste, &c.

B And if one man sueth another in a Court-Baron, or other Court which is not a Court of Record, for Charters concerning Inheritance or Free-hold, he shall have a Prohibition, and the form is such :

Rex Ballivis de R. de P. salutem. Cum Placita de Detentione chartar. seu scriptor. Liber. Tenement. tangentium in aliquibus Cur. que record. non habent, secundum Legem & consuet. regni nostri; sine Brevi nostro placitari non debeant, ac E. W. de eo quod id. W. redd. præf. E. tres Chartas, coram vobis in Cur. præd. Domini vestri de P. sine Brevi nostro implac', ut accepimus; Vobis præcipimus, quod si ita sit, tunc Placito illo coram vobis in Cur. præd. sine Brevi nostro ulterius tenendo supers. omnino; & præf. E. dicatis ex parte nostra, quod Breve nostrum de Detentione Chartar. præd. versus præf. W. sibi impetret, si sibi viderit expedir', Teste, &c. An. 8. Apud Ebor. ipsud Breve ordinat. fuit per Concilium.

Quare non Admisit

C IF a man do recover an Advowson, and hath a Writ unto the Bishop to admit his Clerk, and he will not admit him; then the party may sue an Alias and Pluries, or Attachment, &c. or may sue a Writ out of the Chancery, or out of the Common Pleas, at his election, de quare non admisit, as well in the Term time as in the Vacation; but the best is in Term-time to sue in the Common Pleas: and in this Writ it behoveth him to certify the Recovery. And the form of the Writ of Quare non admisit for the King is such :

Rex Vic', &c. Sum', &c. A. Winton. Episc', &c. quod sit coram nobis tali die, &c. ubicunque, &c. Quare cum nos nuper in Cur' nostra coram nobis recuperassetus, &c. And he shall not say in the Writ, Si Rex fecerit te securum, because the King shall not find Pledges, &c.

D And if the King do recover his Presentment in the Common Pleas, yet he may sue a Quare non admisit in the Kings Bench before himself.

And

And so if a common person do recover in a *Quare impedit* in the Common-pleas, and the Record is removed by a Writ of Error into the Kings Bench, and there affirmed; then he shall have a Writ unto the Bishop here, and ought to sue *Quare non admist* against the Bishop there upon the Record, otherwise not. After the Record removed by a Writ of Error, the Plaintiff who recovered shall not have *Quare non admist* untill the Judgment be affirmed in the Kings-bench.

And the *Quare non admist* ought to be sued in the County where the Bishop refuseth the Plaintiffs Clerk.

And in the *Quare non admist* he shall recover only damages, and shall not have his Clerk admitted by this Writ.

And if the Bishop hath admitted and instituted him, and the Archdeacon will not induct him; he hath no remedy but only in the Spiritual Court, as it is said; for it is a good Plea for the Bishop to say, That he admitted the Clerk, and sent his Letters unto the Archdeacon will not induct him. And I conceive that if the Archdeacon for to induct the Clerk, that the Clerk shall have an Action on the Case against the Archdeacon, because the Induction is a Temporal Act. As if the Sheriff upon *Habere facias seisinam* will not admit him into possession, he shall have an *Alias* and *Pluries*, and Attachment against him. But some have said, that he shall have a Citation against the Archdeacon in the Spiritual Court, and punish him there; for perhaps he may alledge a special cause, for which by the Spiritual Law he ought not to be inducted, which Cause cannot be determined in the Temporal Court. *Ideo quare.*

And if the Vicar-general do refuse to admit the Clerk, the *Quare non admist* shall be brought against the Bishop for that refusal; and if the Bishop do refuse the Clerk, and afterwards dieth, *Quare non admist* is maintainable against the Guardian of the Spiritualties for this refusal made by the Bishop. *Tamen quare.*

The Bishop is not bounden to admit the Clerk, if the Church be full of the Presentment of another party who is not party to the Recovery.

If the Bishop do refuse the Kings Presentee, and doth afterwards admit him, yet the King shall have *Quare non admist* against him for that refusal; and so shall a common person in like manner have, as I conceive.

the Presentment of J. H. and upon that return the Plaintiff had a *Scire facias* against the Bishop: and after the return the Opinion of the Court was; that he should have *Quare non admist*.

In

M In a *Quare non admist* the Bishop may say, that he did present for Lapfe.

N And *Quare non admist* was maintainable against the Bishops Official, *Mich. 9 E. 3.*

A If a man do recover in a *Quare impedit* his Presentment unto a Chappel which is donative, then I think that he shall have a Writ unto the Sheriff to put the Clerk who recovered into possession.

[48.]

B And in a *Quare non admist* the Bishop may say, that the Church is litigious betwixt two, &c.

C If a man hath a donative Chauntry, which is of the nature that one name unto another his Clerk, and that the other shall institute and induct him; there if he who hath the Nomination be disturbed, he shall have a *Quare impedit*; and if he do recover, he shall have a Writ unto him who ought to instal and induct him, to put him in possession. But if he be disturbed by him who ought to instal him, then he ought to have a *Quare impedit* against him: and after that he hath recovered he shall have a Writ to him who disturbed him, to put his Clerk into possession; or he shall have a Writ unto the Sheriff, to put the Clerk of him who recovered into possession, at his Election.

Quare incumbravit.

D *Quare incumbravit* out to be sued in the County where the Church is, because the wrong is done there.

E And *Quare Incumbravit* doth not lie but where the Plaintiff recovereth by Judgment of Court. And the King may sue a *Quare Incumbravit* in the Kings Bench, although the Record of Recovery be in the Common Pleas; but a common person cannot do so. 17 E. 3. 74.

F And *Quare incumbravit* it may be sued in the Common Pleas, 17 E. 3. 74. although the Record be removed in the Kings Bench by a Writ of Error, or in the Treasury; but if the Record be in the Kings Bench, it seemeth then that the party shall sue the *Quare Incumbravit* there, &c.

G And *Quare incumbravit* is an Original Writ, and shall issue out of the Chancery, and not out of the Common Pleas.

H And *Quare incumbravit* doth not lie until the party hath sued the Writ of *Ne admittas* unto the Bishop; for if the Bishop do incumber the Church before the Writ of *Ne admittas* sued, then the party shall have a *Quare impedit*, and not *Quare incumbravit*; for the Bishop cannot have notice until the *Ne admittas* be delivered unto him. And if the Bishop, after the *Ne admittas* delivered unto him, do admit his

his Clerk for whom it is found by the *Jure Patronatus*, yet the other party shall have *Quare incumbavit* against him. And in *Quare Incumbavit* he shall have Judgment to recover damages, and also his Presentment. But so shall he not have in *Quare non admittit*, but only damages.

And in 21 E. 1. it was adjudged, that a man shall have *Quare incumbavit* without making mention of any Recovery in the Writ, or in the Count. But by the Rule of the Register he ought to mention the Recovery; and that seems to be the better Opinion.

And after the *Ne admittas* delivered, if the six Months pass, the Bishop may present his Clerk for Lapse, and shall not be charged by the *Quare incumbavit* for that Presentation; but it seemeth he cannot admit the Clerk of the other man after the six Months past, for that shall be against the Writ of *Ne admittas* delivered unto him. And also if the Bishop, do present the Clerk of the other party after the six Months, who had presented unto him before, that Presentment maketh Title to the party, although it be after the six Months; by which it seemeth that the *Quare Incumbavit* lieth then for the party.

And if the Plaintiff be Non-suit in *Quare incumbavit*, he may sue a new *Quare incumbavit*, and may vary from his Count upon the first Writ. And it is a good Issue, that he did not incurber, &c. after the Prohibition delivered unto him.

And if a man hath a *Quare impedit* depending, and he sue a *Ne admittas* to the Bishop, and afterwards the Bishop do incurber the Church within the six Months with his Chaplain, or with the Defendants Chaplain; then the Plaintiff shall have *Quare incumbavit*, and the form of the writ shall be such.

Rex Vic', Linc. salutem. Si A. fecerit, &c. tunc sum. H. Linc. Episc', quod sit coram Justic', &c. ostens. quare cum idem A. in Cur. nostra coram præf. Justic. recuperasset versus B. Præsentac. suam ad Eccles. de I. per cons. Cur. nostræ præd', idem tamen Episc', pendente Placito in præd. Cur. coram Præf. Justic', eandem Eccl. incumbavit, in ipsius A. dampnum non modicum & gravamen, & contra Legem & consuet. regni nostri, & habeas ibi, &c. Teste &c.

And if he do not appear at the Return of the Writ of *Incurbravit*, nor at the *Alias*, then the *Distringas* shall be in the end, *In nostri ac mandator. nostror. contemptum manifest', & consideration. Cur. nostræ enervationem manifestam: & habeas ibi, &c.*

And if a man hath a Writ of Right of Advowson depending betwixt him and another, and the Church Void pendant the Writ, the Plaintiff shall not have *Ne Admittas* to the Bishop, nor the Writ of *Quare incumbavit*, although the

the Bishop incumber the Church; for the Demandant shall not recover the Presentment upon this Writ, but the Advowson; and if he hath Title to present, he may present, and have a *Quare Impedit* if he be disturbed.

Juris utrum.

- R** *Juris utrum* is a Writ of the highest nature that a Parson [49] can have; and he shall have this Writ where the Lands 19 H. 40. or Tenements are aliened by his Predecessor, or if a Reco- *Fortescue*. If very be had against the Predecessor by Default, or by Red- Annuity be dition, or for want of Pleading of the Predecessor, where he recovered against a hath not prayed in aid of the Patron and Ordinary. But if Parson, his he do pray in aid of the Patron and Ordinary, and they joyn Successor in aid, and render the Land, or confess the Action, then the shall not Successor of such a Parson shall not have this Writ against have *Juris* that Recoveeree: And also if a Man recover by Action tri- *utrum* upon ed against a Parson's Lands, or Tenements, by Verdict, and that Reco- the Parson doth not pray in aid of the Patron and Ordina- very, for ry, yet his Successor shall have a *Juris utrum*, and shall not is taken out be put to a Writ of Attaint. of the pos- session of his
- A** And if a man intrude into Lands and Tenements after Successor; the death of a Parson, the Successor shall have this Writ of *Juris utrum*: and so if a Parson be disseised of Lands and but a charge of Tenements, parcel of his Rectory, and dieth, his Successor the Successor shall have a *Juris utrum*. which shall bind him
- B** And also a Parson may have an Assise of Lands or Te- nements of his Rectory, or a Writ in the *Quibus*, in the nature of an Assise, or a Writ of Entry in the *Per*, or *Cui*, or in the *Post*, upon a Disseisin made to himself, but not upon a Disseisin made to his Predecessor, but shall be put to sue a *Juris utrum*, &c.
- C** Also a Parson may have a *Cessavit*, if his Tenant who Vide 37. c. holdeth of him cesseth, &c. or a Writ of Escheatry, if his Tenant die without Heir. And by the Statute of *West. 2.* he may have *Quod permittat* of common Pasture.
- D** And if a Parson with the Assent of the Patron and Or- Vide 30 H. dinary leaseth his Glebe-lands for life, and the Tenant alieneth in Fee, or loseth by Default; it seemeth the Parson who leased the Land shall have a *Consimili casu* during the life of the Tenant for life; and after the Death of the Tenant for life, a Writ of Entry *ad Communem Legem*.
- E** And if an Abbot or Prior be Parson imparsonce of a Church, and Alieneth the Land of the Rectory, his Successor shall have a *Juris utrum* to recover the Land, and not other Writ, because he shall have that as Parson. And

And if a man leaseth Lands unto one for Life, and afterwards granteth the Reversion by Licence unto a Parson and his Successors, and the Tenant attorneth, and after the Tenant for life loseth the Land by default, or alieneth in Fee; the Parson shall have a Writ *de Consimili casu* during the life of the Tenant for life, and after his death he shall have a Writ of Entry *ad Communem Legem*, &c.

And if a Parson lose by Action tried, or loseth by default; his Successors shall have a Writ of Error or Attaint.

And if a Reversion be granted unto a Parson and his Successors by Licence, he shall have a *Quid Juris clamat*; or if the Services of a Tenant be by Licence granted unto a Parson and his Successors, he shall have a *Per quæ servitia*; and so of a Writ of *Quem redditum reddit*, &c.

And so if a Parson be Tenant in common of a Wood or other Land in the right of his Church with another; and the other Tenant do Waste in the Wood, or Land, &c. the Parson shall have a Prohibition; and if he do Waste, he shall have a Writ of Partition, and the place wasted shall be assigned to the other party by the Statute of *West. 2. cap. 22.* But if a Parson be Patron of a Vicarage, and the Vicarage void, and a Stranger doth present, the Parson shall have a *Quare R. impedit*, or *Darrein Presentment*: But if the six Months pass he shall have a Writ of Right of Advowson, because that that Writ is given only for him who hath the entire Fee and right in him, and the Parson hath not the same, for the right is in the Patron and Ordinary.

Nor shall a Parson have a Writ of Right *sur Disclaimer*, nor a Writ of Customs and Services, nor an *Injuste vexes*; nor such Writs as are grounded upon the meer Right. But it seemeth he may have *Contra formam Collationis*, or *Feoffamenti*, and a Writ of *Mesne*, and *Ad terminum qu. præterit*, &c. and such possessory Writs which are grounded upon the meer Right.

And a Parson or a Vicar shall have a Writ of *Juris utrum* against those who are several Tenants; and then the form of the Writ shall be such:

Rex Vic. S. salutem, Si L. Episcopus de Lond. Person. Ecclesie de E. fecer. te secur', &c. tunc summ. xii. liber' &c. de visn. de E. quod sint coram Justic. nostris apud West. tali die, &c. parati sacrament. recogn', utrum xx. acr. terre cum pertin. in E. sint libera Eleemosyna pertin. ad Ecclesiam ipsius L. an Laicum, feod A.B.C. & D. & interim terram ill. videant, Et sum', &c. præd. A. qui duas acras inde tenet, B. qui octo acr. inde tenet, C. qui quinque acr. & unam rodam inde tenet & D. qui quatuor

Cap. 11.
part 49.

20. E. 3.
Juris utrum
&c. Old N.
125. cont.

act. terræ & tres rodas inde tenet, quod tunc sint, &c.

- O And two Prebendaries may be one Parson in one Church, and then they shall joyn in a *juris utrum*; and their Writ shall be such:

Si W. Præbendarius Præbendæ de N. & R. Præbendarius Præbendæ de I. in Ecclesia beati Petri Eborac', Person. Ecclesiæ de A. prædictis Præbendis annexæ, fecerint, &c. tunc summ. xii, &c. ut supra

- P And where a man is Parson of the moiety of the Church, and another Clerk is Parson of the other moiety of the same Church then one may have a *Juris utrum*, and the Writ shall be such:

*Si W. Person. medietatis Ecclesiæ de N. fecerit, &c. tunc summ. xii, &c. Sacramento recognosc. utrum, &c. sit libera Eleemosyn. pertin. ad medietatem ipsius W. Ecclesiæ præd' an libera Eleemosyn. pertin. ad alteram medietatem R. Person. alterius medietatis Ecclesiæ præd', &c. And Dean and Chapter may have *Juris utrum* in special case where they are Wardens of a Chauntry, thus:*

- R *Rex Vic. Lond. salut. Si Decanus & Capitulum Ecclesiæ S. Pauli London', Custodes Cantariæ ad Altare beatæ Mariæ in Ecclesia Sancti Pauli Lond', pro anima Ric. D. ordinat, fecerint vos secur', &c. tunc summ. &c. de visn. urbis Lond', quod sint coram Justic. nostris apud Westm. tali die, &c. utrum xx. solid. reddit. cum pertin. in suburbio London sint, &c. pertin. ad Cantariam ipsorum Custod. ad Altare præd', an Laicum feod', &c. & interim Ten. unde redditus, &c. Teste, &c.*

[50.]

- A Where a Parson alieneth the right of his Church with Warranty, and afterwards the Alienee is impleaded, and voucheth the Parson. who entreth into the Warranty, and loseth by Action tried, his Successors shall have a *Juris utrum* of the Seisin of his Predecessor which he had before the Alienation. And a Vicar shall have a *Juris utrum* against the Parson for the Glebe of his Vicarage, which is parcel of the same Church. If a Parson receive Rent or Fealty of the Tenant of the Land which is aliened by his Predecessor, he shall not during his life have a *Juris utrum*; but his Successors shall have *Juris utrum*.

40 E. 3. 27.
2 H. 4. 2.
Quare. 21.
H. 4. 13.
11 E. 3. Ju-
ri utrum 19.
7 Eliz.
Dyer 239,
240. 22 H.
8. B. accept
14. 2 E. 6.
B. accept
20.

- D If a Writ of Right be brought against a Parson, who joyneth the Mife without praying in aid of the Patron and Ordinary, and afterwards loseth by Default, his Successor shall have *Juris utrum*. Otherwise it is if he loseth the Land by Verdict, as it seemeth.

- E If a Parson have a Chappel annexed to his Parsonage, to which Chappel Glebe is appurtenant, the Parson shall have *Juris utrum* of the same.

A

A Recovery in a *Cessavit* against a Parson by Default shall not bar his Successor, but he must have a *Juris utrum* against him who recovered.

If a Chaplain of a Chauntry lose the Lands of his Chauntry by an Assise of *Novel Disseisin*, yet he himself shall have a *Juris utrum*, because that that is a Writ of Right; and the Writ is to enquire, *Utrum sit libera Eleemosyna Cantarie, an Laicum feodum*, &c. H. 1. R. 2.

1 B. 1. *Quod*
permittas 9.
32 E. 1.
Comment.
24.

The Parson or Vicar shall have a *Quod permittat* in the H *debet* only of his own Seisin or of the Seisin of his Predecessor; and may have that *Quod permittat* in the nature of an Assise of *Mortdauncestor*, upon the dying seized of his Predecessor.

In a *Juris utrum* the Plaintiff ought to be named Parson I or Vicar, or such name in Right of which name he bringeth his Action: for if an Abbot, or Bishop, or a Dean, bring a *Juris utrum*, by reason of Land which is parcel of the Rectory annexed to the Bishoprick, or appropriated unto the Abby or Deanry, they ought to be named Parsons of the Church in the Writ.

In a *Juris utrum*, if the Tenant at the first day do make K Default, Re-summons shall be awarded; and if he make Default again at the Summons returned, then the Jury shall be taken. And the Tenant shall plead in a *Juris utrum*, L as the Tenant shall plead in Assise of *Novel disseisin*, scil. two or three Dilatories to the Writ; and if it be not found, then to pray the Jury to enquire of the points of the Writ. M

And where the *Juris utrum* is brought against several Tenants by several Summons in the Writ, it may be taken against one only for that parcel, and afterwards against the others. But it is otherwise in an Assise of *Novel disseisin*, if it be not in special cases.

Writ of Consultation.

See the Statute de circumspice agatis, 13 E. 1. *Rastall* Prohibition 3:

IF the Bishop cite any of the Parishioners of the Church N to be contributory unto the reparations of the Parish-Church, or of any Chappel annexed thereunto, if the party who sueth the Prohibition directed unto the Bishop suppose that he is impleaded of a Lay Fee in the Spiritual Court, the Bishop shall have a Consultation upon the matter shewed in the Chancery on the part of the Bishop.

37 H. 6. 2.
Ashton.

And so if a man obtain any Judgment or Sentence in the O Spiritual Court for a Legacy of Money, or other Chattels, if the Executors will sue a Prohibition for to delay the Execution of the Judgment, the party shall have a Consultation.

And

P And if any Chaplain of the King's free Chappels keepeth any Concubine, then the Bishop may cite him before him for to punish him: and if the Chaplain Purchase a Prohibition, because the Kings free Chapels ought not to be visited by the Bishop, yet upon the matter shewed, the Bishop shall have a Consultation to proceed to correct him by pain corporal, and not pecuniary.

Q If a Prior and Covent sue in the Spiritual Court for Tithes and Mortuary, 7. Parson of the Church of C. and an Abbot cometh into the Chancery, and surmisseth that 7. holdeth the Church of his Patronage, and that the Prior, &c. claimeth the third part of the Church of his own Advowson and Patronage, and prayeth an *Indicavit*, and the same is granted; now the Prior, &c. may shew this matter in the Chancery, and have a Consultation, because that in the Statute of *Articuli Cleri* it is contained, that in Dismes and Mortuaries, when under these names they are proposed, there is no room for our Prohibition.

See Articuli Cleri, cap. 1.

R If a Prior sueth in the Spiritual Court for the moiety of the Tithes of four Plough-lands, which he claimeth as appertaining unto the Church of N. whereof he is a Parson imparsonce, which are not of the value of the fourth part of the Church, if the other purchaseth an *Indicavit*, surmising, that they are of the value of the fourth part; he who is sued in the Spiritual Court shall have a Consultation to proceed, *dummodo non agitur de Advocacione alicujus partis Ecclesie, dicta a Prohibitione non obstante.*

S If a man promise unto another with his Daughter in Marriage 10 l. by reason whereof the party marrieth his Daughter, if he who promiseth the money will not pay the money, he shall be sued for the same in the Spiritual Court; and if he purchase a Prohibition, the other shall have a Consultation: and if he who promised the money dieth, yet the Husband who married his Daughter may sue the Executors for that money, or the Executor of his Executors, in the Spiritual Court.

vide 44. 2.
14 E. 4. 6.
17 E. 4. 6.
Com. 399.
20 E. 4. 3.
[51.]

And if any of the Parishioners do disturb any Parson or Vicar to carry his Tithes by the usual ways and passages, the Parson may sue in the Spiritual Court for this disturbance; and if the other sue a Prohibition, upon the matter shewed he shall have a Consultation.

B If a Parson or Vicar have a Pension out of another Church and the Pension is kept from them, and another Parson taketh and claimeth the same; the Parson or Vicar who ought to have the Pension may sue for the same in the Spiritual Court.

N

And

And so if a Parson, or Vicar, or Master of an Hospital, sue for a Pension in the Spiritual Court, which they and their Predecessors have had time out of mind, &c. if the other party purchase a Prohibition upon the matter shewed, he shall have a Consultation: and yet it seemeth, that upon the Prescription he may maintain a Writ of Annuity at the Common Law, but the same is in his Election. But if he once sue a Writ of Annuity at the Common Law for the same, and declare there upon the Prescription, then he shall not afterwards sue in the Spiritual Court for that Annuity in the name of a Pension; and if he do, it seemeth the party may have a Prohibition against him.

38 H. 6. 19. And a Parson may sue in the Spiritual Court a Spoliation against another for taking of his Tithes, or for taking of any pension which doth appertain to his Church, although they claim by several Patrons and of their several presentments: But this is intended only where the Tithes and profits taken and spoiled do not amount unto the

Vide 36. A.

18 H. 6. 19.
For where
the Tithes
of the Pa-
tronage is
in question,
there is no
Spoliation.

fourth part of the value of the Church; for if they claim by several Patrons, and the Tithes, profits or pensions, amount unto the fourth part of the Church, then the party grieved shall have an *Indicavit*, because the Title of the Patronage doth come in debate, &c. But if they claim by one and the same Patron and of his presentment, then one Parson shall have a Spoliation in the Spiritual Court against the other, although the profits do amount unto a fourth part, or a third part, or the moiety of the Church, because the Title of Patronage comes not in debate; and if a Prohibition be sued thereupon, the party shall have Consultation.

If a man have his Sheep lying and feeding for one year in a Parish, the Parson of the Parish may sue in the Spiritual Court for Tithe of Wool of those Sheep; and if the party sue a Prohibition, he shall have a Consultation.

And note, that Consultation shall be granted and directed to the party himself who sued in the Spiritual Court, that he do not proceed in his Suit there; and also he may have a Consultation directed unto the Judge, commanding him to proceed there, notwithstanding the Prohibition aforesaid.

And the Parson may sue the Executors of his Predecessor in the Spiritual Court for the Dilapidations, and for that sum of money which is found by the Enquest charged by the Bishop or Ordinary, that the Dilapidations do amount unto, to pay the same: and if the Executors sue a Prohibition, the party who sued in the Spiritual Court shall have a Consultation directed to the same, &c. to proceed; and another

another Consultation directed to him to sue as before.

G And if a man doth detain his Tithes for his Sheep, which are in the Parish, and there feeding for half a year, if he die, the Parson may sue his Executors for these Tithes in the Spiritual Court, and shall have a Consultation, if the Executors sue a Prohibition. And the Parson by Prescription may claim the Tithe of Calves and Kine, and Milk of Cattel feeding in the Parish, from the feast of the holy Trinity, unto the feast of Saint Peter, which is said *ad vincula*; & *Decim. Lan. Provenientis de Ovibus Parochianorum suorum, occisis & morientibus a festo S. Mich. usque ad festum Paschæ singulis annis*; & *Decimas Mellis & Cere provenienc. de Apibus & alveis Apum infra limites Parochiæ suæ*; and may sue for them in the Spiritual Court, and shall have a Consultation, if he be disturbed by Prohibition.

H And a man may sue in the Spiritual Court for a Legacy: where a man deviseth *fabrica Ecclesiæ* 20. s. &c. the Parson may sue the Executors for the same in the Spiritual Court, &c. and may sue the Executors in the Spiritual Court for the Tithes of Mills due by the Testator in his life-time. And so a Vicar may sue in the Spiritual Court for the Tithe of Beans and Oats, arising within certain limits within his Parish. And so he may sue *pro Decimis panagii provenientibus de bosco suo*; & *pro pullanis provenient. de equitio suo*; & *pro Butyro, Caseo, & Lactificio, tempore hyemali*. But it seemeth the same ought to be by Prescription. And it was agreed before the King's Council in the Parliament holden at Salisbury, *quod Consultationes fieri debeant de silva cadua, eo non obstante quod non renoventur per annum*.

K A man may sue in the Spiritual Court, where another man doth defame him as a Falsifier, an Adulterer, or an Usurer, &c. 27 H. 3. 19.

And a Parson or other Priest may sue in the Spiritual Court, for laying violent hands upon him, &c. to have him per Excommen-ge, or to have corporal punishment, but not to have amends there. 12 H. 7. 23.
per Constable.
11 H. 4. 22.

L Where a Prior sueth a Parson in the Spiritual Court *Pro duabus partibus Decimarum provenient. of the demans of F. whereof the Parson hath spoiled the said Prior, for which the Parson purchaseth an Inducavit in the Chancery, surmising that the Tithes do amount unto the fourth part of the value of his Church, and that the King is Patron thereof, by reason of the Wardship of an Infant in the King's hands, by reason whereof the Prior cometh into the Chancery, and sheweth there that the Tithes do not* 7 H. 4. 1.
[52.]

amount unto the fourth part of the value of the Church, and hath a writ directed unto the Bishop to certify the King into the Chancery the value of the Church which the Parson holdeth, and the value of the Tithes demanded by the Prior: if the Bishop by his Letters certify for the Prior, then the Prior shall have a Consultation. And so it seemeth by this Writ, that where an *Indicavit* is sued, &c. the King shall be certified by the Bishops Letters upon a Writ directed to the Bishop, what is the value of the Church, and also what is the value of the Tithes demanded in the Spiritual Court, before a Consultation shall be granted: And it seems to be a good Rule, and a good Order, so as no party shall be deceived: And this Certificate of the Bishop shall bind the party to say or aver any thing against it. But a Consultation shall be granted upon the Certificate returned, &c. but notwithstanding that, if it be unto the fourth part of the value of the Church, the party may sue a Writ of Right of Tithes, &c.

11 H. 4. 48.
So if the Bishop certify that J. S. is urlagary, or in prison at the time of the urlagary. 15
E. 3. utlagary 2. Brev. Estoppel 211.

If a Bishop make an Order, that the Parson of such a Church shall yearly pay unto the Abbot of B. and his Successors two parts of the Profits of the Church in the name of a yearly Pension, and that the Parson before he have possession of the Church take an Oath so to do, for which the Parson sueth in the Court of *Rome*, and obtaineth a Delegacy directed unto the Bishop, and his Officers, to repeal the Order, &c. now if the Abbot sueth a Prohibition upon this matter the Parson shall have a Consultation.

If a Lay-man will not make his Offerings at days limited to the Parishioners to offer, or will not confess himself unto his Curate, or receive the Sacrament of our Lord Jesus Christ of his Curate, by reason whereof the Curate citeth and sueth him in the Spiritual Court for the same: if he purchase a Prohibition, &c. upon shewing the matter, a Consultation shall be granted.

See for their capacity at the Common Law,

11 H. 4. 12.
7 H. 6. 30.
12 H. 7. 27.
3 E. 4. 6.
12 H. 7. 22.

If the Churchwardens of any Church have used time out of mind to receive yearly of one of the Tenements of the Parish a pound of Wax to maintain the Taper before the Crucifix in the Church, and he who is now Tenant of the Tenement refuseth to pay this Wax, &c. there the Churchwardens may sue in the Spiritual Court for the same: and if he obtain a Prohibition, Consultation shall be granted. If a man be condemned in the Spiritual Court in a Cause of Defamation, for which he appealeth unto the Court of *Canterbury*, &c. and there the Sentence is confirmed, and the party condemned in twenty shillings for costs,

- costs; and the Cause remitted unto the Judges before whom it was first commenced, by reason whereof he who is condemned sueth a Prohibition; the other party shall have
- E** a Consultation. If a Parson doth detain from the Parishioners the Goods of the Church, and in his Will he enjoyneth his Executors to deliver them unto the Parishioners; the Parishioners may sue the Executors in the Spiritual Court for them; and if they sue a Prohibition, the Parishioners shall have a Consultation; and this Consultation may be sued by any of the Parishioners who will sue in the Spiritual Court. If the Bishop or his Official cite any man for laying violent hands upon any Clerk, &c. if he sue a Prohibition, the other may have a Consultation; *Dummodo agitur ad pœnam corporalem, & non pecuniariam, &c.* See 51. R.
- F** If a man in time of the Vacancy of a Parsonage or Vicarage will not pay his Tithes, and the Ordinary *ex Officio* cite him to pay them, &c. if he purchase a Prohibition, the other shall have a Consultation granted unto him.
- G** If an Abbot and Covent are bounden, by reason of any Ordinance lawfully made, to find four Chaplains to sing in such a Church or Chappel for the souls of such or such, and if they fail to find them, they bind themselves in divers pains and censures, and if they fail in all or in part to find these Chaplains, they have granted that the Dean of *Salisbury* or his Official shall interdict their Church, and so hold it until they have satisfied, &c. for which the Dean or his Official, *ex Officio*, cite the Abbot and Covent to find the said Chaplains. &c. if they sue a Prohibition, the Dean or Official shall have a Consultation in that case.
- H** If the Ordinaries do forbid the Friars, that they shall not hear Confessions, nor they shall not admit any one to be buried in their Church, and sue them in the Spiritual Court for that Cause; if the Friars purchase a Prohibition, the Ordinaries shall have a Consultation.
- I** If a man sueth in the Spiritual Court for taking and detaining from him his Wife lawfully married unto him, if the other sue a Prohibition for the same, he shall have a Consultation, forasmuch as for restitution of his Wife only he sued, &c. And yet he may have an Action at the Common Law, *De Uxore abducta cum bonis viri*, or an Action of Trespass for taking the Wife as it seemeth.
- J** And a Parson shall sue for a Pension of forty shillings in the Spiritual Court, whereof the House hath been seized time out of mind, and shall have a Consultation thereupon, if a Prohibition be sued, &c.

If a man recover in the Spiritual Court in a Cause of De-M
famation costs, he shall sue there for the costs ; and if the
other sue a Prohibition, he shall have a Consultation.

[53.] And if a man have corporal punishment in the Spiritual A
12. H. 7. 22. Court for a Cause of Defamation, or for laying of violent
hands upon a Clerk, &c. if the party will redeem his Pe-
nance, and promise to pay unto the party a certain sum
for his damages, &c. if after he will not pay the money
unto the party, the party damnified may sue for the same
in the spiritual Court ; and if the other party purchase a
Prohibition, he shall have a Consultation.

If a Parson for an offence have Judgment to be deprived B
in the Spiritual Court, and the Patron doth present another
Parson unto the Ordinary, who sueth the first Parson in the
Spiritual Court because he will not void the Church, but
defend himself by Appeals or other matters, &c. now if the
first Parson purchase a Prohibition, the other may sue a
Consultation ; or without any Prohibition sued by the first
Parson, the Parson may sue a Writ in the Chancery unto
the Spiritual Judge, to proceed in the Spiritual Court upon
the Cause of Deprivation and Disability.

Upon a Legacy given to any order of Friars, they may C
sue the Executors in the Spiritual Court for the same. And
if the Executors purchase a Prohibition, they may have a
Consultation upon the matter shewed, &c.

If Friars or other persons whatsoever, sue in the Spiri- D
tual Court for a Legacy, and have Process against others as
Witnesses in that Cause ; if the Witnesses will sue a Prohi-
bition furnishing that they are sued against their wills *ex*
Officio Judicis, in the Spiritual Court, &c. yet he or they to
whom the Devise is made shall have, upon the matter shew-
ed, a Consultation.

And note that the Justices of the King's Bench may
grant a Consultation of Tithes as well as the Chancellor.
And when the Justices grant a Consultation of Tithes of
Spoliation, they make the Libel indorsed in such manner.

Dominus Rex non habet cognoscere in Foro Ecclesiastic. de
Spoliatione Decimarum, quatenus de Jure Patronat. seu de Ad-
vocatione Decimarum non agatur. And so they give no power
by the Indorsment; and the Rule in the Register is by those
words.

Nota, that the Justices said, That Tithes shall not be but E
of such things which increase from year to year, and
that by the manure of man ; but that is against the Decre-
tals.

And

F And all the Justices are against a Consultation in a Cause of Defamation, because, it seems, he may have his Action at Common Law for the same Defamation. 27 H. 3. 13.
ac. Br. Consultation 7.

G Also of Coals, or of Quarries, or the like, a man shall not pay Tithes, nor of Agistment, because that he payeth Tithes for the Cattel which feed in the Pastures. Register 55.
Br. Dismes 18.

H And also they say, that properly a Consultation ought not to be granted, but in case where a man cannot recover at the Common Law in the King's Courts.

I And if the Bishop cite a man *ex Officio* for to appear before his Officers for Fornication, &c. or such like offences, and the party defendeth himself by Appeals, or such other delays, and by suing a Prohibition unto the Spiritual Court, and afterwards he waves the delays, and submits himself to the Judgment of the Spiritual Court, and they delay to proceed in these Causes for the vexation and delays, and the suing of the Prohibition which the party had before; then the party shall have a Writ directed unto the Spiritual Judges, that they do proceed *in causa Defamationis ad penam canonicam imponend', & in causa Submissionis, &c. Provisio quod quicquid in juris nostri Regii derogation. cedere valeat aliquo qualiter, per vos nullatenus attemptetur.*

K If the very Patron present an able person to the Ordinary, and the Ordinary refuseth him, and afterwards a Disturber presenteth unto the Ordinary another person unto the same Church, and the Ordinary doth admit, institute and induct him, and afterwards the very Patron recovereth his Presentment against the disturber; for which cause the presentee of the very Patron sueth the presentee of the Disturber in the Spiritual Court, to avoid and remove him; for which cause he sueth a Prohibition, &c. now the presentee of the very Patron shall have a Consultation unto the Spiritual Court to proceed in that case, &c. But first the Record in the Common Pleas ought to be certified into the Chancery of the Recovery or of the Composition there made of the Title of the Presentment, before the Consultation shall be granted.

L If the Tenants or Possessors of any Lands or Tenements within any Parish have used to find a Chaplain to say Divine Service in the Parish Church, &c. time out of mind &c. and afterwards they withdraw, and will not find such Chaplain, &c. then the Parson and Parishioners shall sue against them in the Spiritual Court, for to find such Chaplain in the Church: and if the Tenants or Possessors of the Land sue a Prohibition upon the matter shewed in Chancery, the

Parson and Parishioners shall have a Consultation to proceed, and by such words: *Vobis significamus, quod in causa illa quatenus ad Cantariam præd. ad pristinum statum, &c. & ad debitam punitionem occasione subtractionis hujusmodi eidem, &c. imponend. per vos agitur, licite procedere, & ulterius facere poteritis quod ad forum Ecclesiasticum noveritis pertinere, dicta Prohibitione nostra, seu aliqua alia vobis in causa præd. impofterum dirigend', non obstante, &c.*

[54.]

And if it be after time of memory, viz. in the time of R. 1. and before the Statute of Mortmain, the Parson and Parishioners shall have such Suit for a Chantry, &c. And if a Parson and Parishioners sue one such Tenant and Possessor of the Lands to find such Chaplain, &c. and he sue an Inhibition from the Court of Canterbury; or appeal unto the Court of Canterbury, or make such subtil delays in the Court of Canterbury; then the Parson and Parishioners shall have a special Writ unto the Archbishop and his Officers: *Quod in casu & processu præd. coram vobis in Cur. Cant. virtute Appellationis præd' devolutis, quatenus ad Cantar. ad debitum statum reducere faciend', ad debitam punitionem occasione subtractionis hujusmodi eidem, &c. imponend', & impon. faciend', & ad dictam sententiam in ipsum latam, si rite deducta fuer', in suo robore permanere faciend. per vos agitur, rite procedere, & ulterius facere poteritis, &c. dicta Prohib. nostra non obstante.*

If a man devise an Ox or a Cow unto the Church for A Reparation thereof, or for the Churchyard, and he who hath the Cow or the Ox will not deliver the same unto the Churchwardens; then the Ordinary *ex Officio*, or the Churchwardens may cite him, and sue him for the detaining of the Cow or Ox: and if the other party sue a Prohibition, the Churchwardens shall have a special Consultation. *Vobis significamus, quod in casu præd' quatenus ad restitutionem eisdem Gardianis de Legat' præd', in forma præd', ac pœnam Canonicam eidem imponend' pro detentione eorund' coram vobis tantumvis agitur, licite procedere, & ulterius facere poteritis quod ad forum Ecclesiasticum, &c. Prohibitione nostra non obstante.* And if he will not proceed upon that, they may sue an Attachment, &c.

And in many cases a man shall have a special Consultation. B As, if a Parson sue in the Spiritual Court for Tithes of great Trees which pass the age of 20 years, and makes his Libel by the name of *Silva cadua*; now the party may shew in the King's Bench, or in the Chancery, that the Trees were great Trees above the age of 20 years; and upon this Surmise he shall have a special Consultation, to proceed *ita quod*

quod de cadua, and not of other Trees which are past 20 years growth, or the age of 20 years. And see the Statute for the same, *Anno 45 E. 3. cap. 31.*

C If a man have a Chappel within his Mannor which is a donative Chauntry, or presentable, and the Chaplain hath used to have the Tithes arising of the demans of the Mannor time out of mind, &c. now if a Parson (in whose Parish this Chappel is) sueth the Lord of the Mannor, and also the Chaplain in the Spiritual Court, for the Tithes of the same Mannor, they shall have a Prohibition, &c. because the Advowson of this Chappel may come unto the King by Wardship or Escheat, &c. And then the Parson within whose Parish this Mannor and Chappel is, shall have a special Writ of *Scire facias* against the Lord of the said Mannor, and also against the Chaplain returnable in the Chancery at a certain day, if they can say any thing wherefore a Consultation shall not be granted, and the Writ of Prohibition revoked and repealed; and farther to do as the Court shall award in that case. And in the end of the Writ shall be, *Et habeas ibi nomina eorum per quos ei scire feceris. &c. & hoc Breve, &c.* Which Writ appeareth in the Register, in the end of the Writs of *Significavit*.

See Com. 472. in Molin's Case. Plow. commends this form of Scire facias; but there is another form used at this day.

Breve de Vi Laica removenda.

D **T**His Writ de Vi Laica Removenda lieth as well upon a Surmise made by the Incumbent, or by him that is grieved, &c. without any Certificate thereof made in the Chancery by the Bishop, as upon a Certificate thereof made in the Chancery by the Bishop.

Old Na. Br. 33. cont. and Marrow in his Rea-ding.

E And when the Bishop makes Certificate into the Chancery of the Force, then the Form of the Writ is such:

Rex Vic. Linc' salutem. Ad requisition. venerabilis Patris Lincoln' Episcopi, tibi precipimus, quod omnem Vim Laicam, quæ se tenet in Ecclesia de I. suæ diocesis, ad perturbandum ipsum Episcopum, quo minus officium suum Spirituale in Ecclesia illa exercere possit, sine dilatione amoveas ab eadem, &c. And he shall have an *Alias*, and a *Pluries*, and an *Attachment* against the Sheriff, directed unto the Coroners, if he do not serve or return the Writs.

F And if the King do collate unto any Prebend of any Bishop come to him by Title, and the Bishop make resistance, that the King's Presentee cannot have the corporal possession thereof; then the Writ shall be directed unto the Sheriff, and shall be such:

Precipimus tibi, quod omnem Vim Laicam seu armatam qua se

Breve de Vi Laica removenda.

se tenet in dicta Ecclesia, vel Dominus eidem annexis, ad pacem nostram in Com. tuo perturband', sine dilatione amoveas ab eisdem; & si quos in hac parte resistentes inveneris, eos per corpora sua attachies, & in prisona nostra salvo custodias, ita quod eos habeas coram nobis in Octab' Sancti Hil', &c. ubicunque, &c. ad respondend. nobis de contemptu & resistentia supradict'. Et habes ibi nomina eorum quos attachiaveris, & hoc Breve. And this Writ *de Vi Laica removenda* may be made returnable or not returnable, at his pleasure who will sue the Writ; and it may be returned into the Common Pleas as well as into the King's Bench.

[55.] And note, that by this Writ the Sheriff ought not to remove the Incumbent who is in possession of the Church, whether the possession be of right or wrong, but only for to remove the Force, and to suffer the Incumbent for to enjoy the possession: and if the Sheriff do amove or would put out the Incumbent who is in possession, the Incumbent shall have a Writ directed unto the Sheriff, commanding him that he do not put him out; and if he hath put him out, that without delay he make him amends: and if he do not so do, the party may have an *Alias*, and *Pluries*, and Attachment against the Sheriff. And the form of the Writ *de Vi laica removenda*, without the Certificate is such:

Rex Vic. S. salutem. Praecipimus tibi, quod omnem Vim Laicam, seu etiam armatam potentiam, quae se tenet in Praebenda de E. in Ecclesia de C. ad pacem nostram perturband', sine dilatione amoveas ab ead': & si quos tibi resistent. inveneris in hac parte, tunc assumt. tecum sufficien. posse Com. tui, si necesse fuerit, eos attachies per corpora cor', &c. ut supra.

And the form of the Certificate of the Bishop is such: B

Excellentissimo Principi & Domino suo, Domino Henric. Dei gratia, &c. W. permissione divina Ebor Archiepiscopus, Ang. Primas, salutem in eo per quem Reges regnant & cuncta subsistunt. Celsitudini vestrae Regiae notum facimus per praesentes, quod quidam, salutis suae immemores, possessionem Domini I. in Ecclesia de C. nostrae Dioc. canonice sibi collata, quam A. aliquando tenuit occupat, in nostr. offc. & libertatis Ecclesiasticae & juris praedict. I. praedictum impediunt & perturbant: Idcirco Excellentiae vestrae humiliter supplicamus, quatenus ad hanc vim & potestatem omnimod. amovend. brachium regalis potentiae solita gratia apponatis, ut inimicor. Christi rebellio sic per vestrum reprimat. subsidium, ut libertas Ecclesiastica sub vestr. defensionis clypeo tuta maneat & illaesa, & vos a Deo exinde retributionem condignam consequi valeatis, qui vos Ecclesiae suae & populo per tempora conservat divina. Dat. apud B. quarto Kalend', &c.

Writ

Writ of Wast.

C The form of the Writ of Wast against Tenant in Dower doth vary from the form against other Tenants ; for the Writ of Wast against Tenant in Dower is such :

Rex Vic', &c. Si A fecerit te secur', &c. tunc sum. per bonos Sum. B. quæ fuit uxor C. quod sit coram Justic. nostris apud West. in quinden. Trin', ostens. quare fecit Vastum, venditionem, destructionem, & exilium in terris, domibus, boscis, gardinis, & hominibus, quæ tenet in dotem de hereditate præd. A. in N. ad exhæredationem, &c. And in that Writ he doth not rehearse the Statute which gave the Writ of Wast, nor the Writ of Wast against the Gardian, because they were punishable at the Common Law, before the Statute, by Prohibition and Attachment thereupon, if they did Wast. And exilium in hominibus shall not be put in the Writ of Wast, if the Tenant in Dower or other Tenant do not misuse the Villains of the Mannor, by reason whereof they depart from the Mannor, or from their Tenures ; and if they do, then it is Wast. And in a Writ of Wast against Tenant for life or years, he shall recite the Statute in such form :

Rex Vic', &c. Si A. fecer. te secur', &c. tunc sum. B. &c. quare cum de communi consilio regni nostri Angl. provisum sit, quod non liceat alicui Vastum, venditionem, seu destructionem facere in terris, domibus, boscis, seu gardinis ; idem B. de terris, domibus, & gardinis in L. quæ prædict. A. ei dimisit, &c. fecit Vastum, &c.

D And if an Abbot bring a Writ of Wast against Tenant in Dower, the Writ shall be ; *Ostens. quare fecit Vastum in terris, &c. quas tenet in dotem de jure Ecclesie ipsius, ad exhæredationem Ecclesie sue, &c. And shall not say, de hereditate ipsius Abbat', nor ad exhæredationem ipsius Abbat', &c. But if the Heir bring a Writ of Wast against the Tenant for life of his Ancestors, then the Writ shall suppose that the Tenant holdeth de hereditate, &c. and that the Wast is done ad exhæredationem suam, &c. and that they have made Wast of Lands they hold in Dower of the Wife, yet the Husband doth not hold in Dower.* 29 E. 3. 15.
Ec 3. Ma.
Dyer 129.

E And the Writ of Wast shall be alwaies brought against the Tenant in Dower, or Tenant by the Courtesie, although they have granted over their Estates unto others.

F If the Husband make a Peoffment of his Land, or a stranger doth abate after the death of the Husband, or disseiseth the Husband in his life-time, and afterwards the Wife

Writ of Wast.

Wife recovereth her Dower against the stranger, &c. if he bring a Writ of Wast against the Wife, the Writ shall make mention of the Recovery, &c. how she recovered the Land against him.

If a Feme hold in Dower of the King who hath the Reversion, and the King granteth the Reversion in Fee unto a stranger, and afterwards the Feme committeth Wast; now the Grantee shall have a Writ of Wast, and the Writ shall make mention how she holdeth of the King, and how he hath granted the Reversion unto a stranger, &c. and that she who held in Dower of the stranger of the Kings Grant hath committed Wast, &c. So if the Husband dieth, and the Heir maketh a Feoffment unto a stranger in Fee, who assigneth Dower unto the Wife, and she commits Wast; the Writ shall make mention that she held in Dower of the gift of her Husband by the Assignment of a stranger, of whom the afore said Feme held in Dower of the Assignment which the Heir of the Husband hath made to the said stranger, *ad exharedationem* of him who bringeth the Writ. The form of the Writ of Wast where the Wife is endowed *ex assensu patris* is such :

3 & 4 Eliz.
Dyer 206.
208.

[56]

Rex, &c. Si S. &c. tunc sum', &c. quæ fuit uxor R. quod sit A &c. ostens. quare fecit Vastum, &c. qu. tenet in dote de dono præd. R. quondam viri sui, ex assensu A. de B. patris prædicti R. de præf. S. ex assignatione ejusd. A. &c. And if the Wife do recover her Dower against the Father, then the Writ of Wast shall make mention of the Recovery thus ; *Et quod eadem Isabella in Cur' nostra coram Justic' nostris de Banco per considerationem ejusd. Cur' recuperavit, ut dotem suam, versus præf. A. ad exhared' ipsius S. &c.* And the Writ may be of Mills and Vivaries; and then the Writ shall be, *ostens. quare fecit Vast. de terris, domibus, molendinis, boscis, vivariis, & gardenis.*

40 E. 3. 33:
Finchden.
41 E. 3. 23.
Candish.
42 E. 3. 19.
per Curiam,
24 H. 8. 14,
20. ac.

And if a Gardian in Chivalry grant over his Estate, who maketh Wast, the Writ of Wast shall be brought against the Grantee, and not against the Gardian; and it is not like Tenant in Dower, or by the Courtesie: but if the Gardian do commit Wast, and afterwards granteth over his Estate, then the Heir shall have an Action of Wast against the Gardian, and not against the Grantee. And so if tenant for life or years commit Wast, and granteth over his Estate, the Writ lieth against him who doth the Wast, and not against his Grantee. And the form of the Writ against the Gardian is such : *Rex, &c. Si A. fecerit, &c. tunc sum' &c. quare fecerit, &c. quæ habet vel habuit in custodia de hereditate, &c. ad exharedationem, &c.*

And

B And against the Executors of the Gardian the Writ is *Sum', &c. B. & C. Executores Testamenti de, &c. quare fecer. Vastum &c. quas habent in custod. post mortem præd. B. de hæred', &c. ad exhæred. &c.*

C In a Writ of Wast against Tenant by the Courtesie, the form of the Writ by the Register is to recite the Statute; and yet it seemeth the Writ is good, although that he do not recite the Statute; and the form of the Writ is:

Rex, &c. Si A. fecerit, &c. tunc sum', &c. quare cum de Com. consilio regni nost i Angl. provisum sit, quod non liceat alicui Vastum, venditionem, seu destructionem facere in terris, domibus, boscis, seu gardinis sibi dimissis ad terminum vitæ vel annorum, seu de illis quæ per legem terr. tenent; idem B. de domibus quas tenet per legem Angl. de hæreditate præd. A. in N. fecit Vastum, ad exhæredationem ipsius A. & contra formam provisionis præd', ut dicitur. Et habeas, &c.

D And if the Heir grant the Reversion of Tenant by the Courtesie unto another in Fee, and the Tenant attorn,&c. then the form of the Writ is such:

Rex, &c. Si abbas de B. &c. fecerit &c. tunc sum. B. &c. quare cum, ut supra, idem B. de domibus in N. quas tenet ad vitam suam de præf. Abbate, quas A. de quo idem B. illas tenuit per legem Angl. de hæreditate ipsius A. assign. inde præf. Abbati, fecit Vastum, &c.

And if the Heir granteth the Reversion unto another stranger in Fee, and the Tenant by the Courtesie doth attorn, and afterwards granteth over his Estate by the Courtesie to another stranger, and afterwards that stranger committeth Wast; now the Grantee of the Reversion shall have his Action of Wast against the Grantee of the Tenant by the Courtesie, for he cannot be Tenant by the Courtesie, if not of the Heir, &c.

E But if the Tenant by the Courtesie grant over his Estate unto a stranger, and the Grantee commit Wast, the Heir shall have the Action against the Tenant by the courtesie, and not against the Grantee who committed the Wast. But if the Heir have obtained or granted the Reversion in Fee, &c. and after the Tenant by the Courtesie attorn, and after grants over his Estate unto a stranger who committeth Wast; now the Grantee of the Reversion shall not have an Action of Wast against the Tenant by the Courtesie, but against the Grantee of the Tenant by the Courtesie. And if a Feme be Tenant in Dower, and she grant her Estate unto a stranger, and after the Heir granteth the Reversion in Fee unto another, and the Tenant attorneth, and after the Tenant for term of life

20 H. 4. At-
tornment: t
16 The At-
tornment of
Tenant in
Dower is
good.

life commits Wast ; it seemeth that the Grantee in Rever-
sion shall have an Action of Wast against the Grantee of
the Tenant in Dower, as he shall have against the Grantee
of the Tenant by the Courtesie. The form of the Writ of
Wast against the Tenant for life or years is such :

*Rex &c. Si A. fecerit, &c. tunc sum. B. &c. Cum de communi
consilio, &c. in terris, &c. sibi dimissis ad terminum vite vel an-
norum ; idem B. de terris, domibus, boscis & gardinis in L. que
præd. A. præf. B. dimisit ad vitam ipsius B. : Or thus, Quæ F.
pater vel mater, vel aliqu. Antecess. præd. A. cujus hæres i se est,
præf. B. dimis. ad terminum annor', fecit Vastum, &c. ad exhæ-
redationem, &c. & contra formam provis. præd', ut dic' : & ha-
beas, &c.*

11 E. 3.

West. 113.

And by the Statut of Marleb. cap. 23. it is ordered, *Quod H
Firmarii, &c. non fac' Vastum in domibus, &c. vel exil. de ho-
minibus.* By which Statute the Writ of Wast *de Exilio homi-
num* is warranted, &c.

In a Writ of Wast, if the premises of the Writ recite I
*Quod non liceat alicui facere Vastum in domibus, boscis, & gar-
dinis ;* in the end of the Writ it is said, That the Def. hath
done Wast in Lands, Houses, Woods, Gardens, and Exile
of men ; so as there is more in the end of the Writ than
is in the premisses, yet the Writ is good : and so if less
be in the end of the Writ than is recited in the premisses,
yet the Writ is good. As if it be recited, *Quod cum provi-
sum sit, quod non liceat alicui facere Vastum, &c. in terris, domi-
bus, boscis, & gardinis ;* and in the end it is recited, *Quod De-
fend. fecit Vastum in terris* only, or in *boscis* only, or in *domi-
bus* only ; yet the Writ is good.

If an Abbot make a Lease for life or years, and dieth, A
and the Lessee afterwards committeth Wast, the Writ shall
be such : *Rex, &c. Si Abbas, &c. tunc sum. B. Quare cum de
communi consilio, &c. idem B. de domibus in L. quas præd. Ab-
bas, &c. (if the Abbot himself maketh the Lease ;)* and if
his Predecessor made the Lease, then thus ; *quas R. quondam
Abbas, &c. prædecessor præd' nunc Abbatis, præf. B. dimisit ad
vitam ipsius B. vel ad terminum annorum, (if the case be so)
fec. vastum, &c. ad exhæredationem Eccl. ipsius Abbatis.* And
the like shall be for a Prior, or Master of an Hospital.

And against the Executors the Writ shall be ; *Sum' I. & B
K. Executores Testamenti L. quod sint, &c. iidem Executores de
terr. quas præf. A. præd' L. dimisit ad terminum annor', fec' Vast.
&c.*

And if a man make a Lease to a Feme sole of Chafes, and C
she take Husband, and the Lessee dieth, and she and her
Husband

Husband commit Wast; the Writ for the Heir shall be thus:

Rex, &c. Si A. fecit, &c. tunc sum' B. & C. ux' ejus, quod, &c. quare cum, &c. iidem B. & C. de virvariis in L. quæ tenent ad vitam ipsius C. ex dimissione quam F. pater præd' A. cujus hæres ipse est, inde fecit præf. C. fecit Vastum, &c.

And another Writ for the Heir: where Land is leased to Husband and wife, and the Heir, and the Husband dieth, and the Wife committeth Wast, the Writ shall be: *Eadem A. de domibus in L. quas tenet ad vitam suam, ex dimissione quam W. inde fecit eidem A. & præf. B. quond' viro suo, & hæred' ipsius B. patris præd' H. cujus hæres ipse est, fecit Vastum, &c.*

And another Writ: when a Gift is made unto the Husband and Wife, and unto the Heirs of the body of the Wife, and the Wife dieth, and the Husband committeth Wast, the Heir shall have a Writ of Wast, and the Writ shall be:

Idem A. de domibus in B. quas tenet ad vitam suam, ex dimissione quam W. inde fecit præf. A. & M. quondam uxori ejus, & hæred. de corpore ipsius M. matris præd' B. cujus hæres ipse est, executibus, fecit Vastum, &c. contra formam, &c.

And if a man leaseeth Lands for term of life, and hath three or four Sisters, and dieth, and they make Partition of the Lands, and of the Reversion, and the Tenant for life committeth Wast; that Sister and her Husband who hath the Reversion shall have a Writ of Wast and the Writ shall be:

Rex, &c. Si A. de B. & M. ux. ejus, fecit. &c. tunc sum', &c. F. &c. quare cum de communi consilio, &c. idem F. de domibus, &c. in L. quas tenet ad vitam suam, ex dimissione S. de C. de purparte ipsius M. ipsam de hereditat. quæ fuit ipsius S. fratris sui, cujus una hæred. ipsa est, per partitionem inter ipsas M. A. & B. sorores ejus S. inde factam, conting', fecit Vastum, &c. Or thus: Idem F. de domibus in L. quas tenet ad vitam suam de præf. M. ex dimissione A. patris præd' M. cujus una hæred. ipsa est, de purparte ejusd. M. ipsam de hereditate præd. A. conting', fecit Vastum, &c. And if Tenant for term of Life grant over his Estate unto another, and the Grantee committeth Wast the Writ shall be,

Rex, &c. Si B. fecerit, &c. tunc sum' A. &c. idem A. in domibus in N. quas tenet ad vitam I. ex dimissione quam idem I. cui præf. B. illas dimisit ad eundem terminum, inde fecit præf. A. fecit Vastum, &c. And if Tenant for term of life grant over his Estate, and the Grantee granteth over his Estate, then the Writ shall be thus:

Rex

Rex, &c. Si M. de R. Præbendarius Præbendæ de F. in Eccl. beati Petri Ebor', fecerit, &c. tunc sum' R. &c. quare cum, &c. idem R. de domibus in L. quas tenet ad terminum vitæ A. quæ fuit ux. H. de N. ex dimissione M. de O. qui ill. tenuit ad eundem termin' ex dimissione ipsorum H. & A. cui quidem A. & M. de O. quondam viro suo, W. B. quondam Præbendarius præd. Præbendæ, predecessor præd' Præbendarii, ill' dimisit ad vitam eorund. M. de O. & A. fec. Vastum, &c. ad exheredation. Præbend' ipsius R. & Contra formam provisionis præd', &c.

And by that it appeareth, that if a Prebendary or Parson maketh a lease for term of life, he or his Successor shall have an Action of Wast. If M. leaseth Lands unto I. for term of life, and dieth, and L. Son and Heir of the said M. granteth the Reversion unto H. in Fee, and H. granteth this Reversion unto A. in Fee, and afterwards the Tenant for life committeth Wast; now the Writ of Wast brought by A. shall be such :

Rex, &c. Si A. fec', &c. tunc sum. I. &c. quare, &c. id. I. de domibus in L. quas tenet ad vitam suam de præf. A. ex assignatione A. de quo idem I. illas tenuit ad vitam suam, ex assignatione quam L. filius & hæres M. qui ill. præf. I. dimisit ad eund. terminum, inde fecit eid. H. fecit Vastum, &c.

If S. and K. his Wife seised in Fee, lease the Land unto O. for term of life, and afterwards S. dieth, and D. takes H. to Husband, and K. granteth, the Reversion unto A. in Fee, and afterwards D. attorneth, and committeth Wast, and A. bringeth Wast, the Writ shall be :

Rex &c. Si A. fecerit, &c. tunc sum', &c. B. quod sit, &c. idem B. de domibus in N. quas tenet ad vitam suam de præf. A. ex assignatione quam H. & K. ux. ejus, quæ quidem K. & S. quondam vir suus, illas præf. B. dimiser. ad eundem terminum, inde fecer. præf. A. fecit Vastum, &c. If N. leaseth Lands for years unto F. which F. maketh I. his Executor and dieth, and I. leaseth the Lands unto R. and afterwards N. granteth the Reversion in Fee to P. and P. granteth the Reversion to M. in Fee, and after R. Tenant for life, committeth Wast; the said M. shall have a Writ of Wast, and the Writ shall be :

[58.] *Rex Vic', &c. Si M. fecerit, &c. tunc sum., &c. R. quod sit, &c. quare cum &c. id. R. in domibus in L. quas tenet ad termin. annor', ex dimiss'. I. Exec. Testam. F. cui N. illas dimisit ad eund. terminum præf. M. ex assign. P. de quo idem R. ill. tenuit ad eund. termin. ex assign. quam præd. N. inde fecit præf. P. fecit Vastum, &c.*

F. leaseth

A. F. leaseeth Lands unto E. and A. his Wife, and unto the Heirs of E. and afterwards E. dieth, and B. his Son and Heir granteth the Reversion unto C. in Fee, and afterwards A. committeth Wast; the Writ shall be:

Rex, &c. Si C. fecerit, &c. tunc sum. A. &c. quare cum, &c. idem A. in domibus n. B. quas tenet ad vitam suam de præd. C. ex assign. quam B. filius & hæres E. cui præf. A. quondam ux. sua, E. illos dimisit, habend. eis d' E. & A. & hæ. ipse E. inde fecit præf. C. fecit Vastum, &c.

B. M. leaseeth Lands for life unto C. and A. her Husband, and A. dieth, and C. taketh to Husband T. or F. and T. and C. his Wife lease the Lands unto F. of F. who leaseeth the Lands unto I. and afterwards M. granteth the Reversion unto R. in Fee, and I. committeth Wast. and K. bringeth a Writ of Wast; the Writ shall be such.

Rex, &c. Si R. fecerit, &c. tunc sum. I. &c. quare cum. &c. eadem I. in domibus vel terris quas tenet ad vitam C. ux. T. de F. de præf. R. ex assign. M. de quo P. de H. quæ ill. præf. I. ad terminum ill. m. dimisit, ill. tenuit ad eund. terminum, ex dimissione præ T. & C. cui quidem C. & A. quondam viro suo, præf. M. ill. dimisit ad vitam eorund. A. & C. inde fecit præf. R. fecit Vastum, &c.

C. R. leaseeth lands unto Amice and J. her Husband for term of their lives, the Remainder to N. Daughter to J. D. for term of her life the Remainder to the right Heirs of J. D. and afterwards T. (right Heir of J. D.) granteth that Remainder unto B. of C. in Fee, and afterwards J. (Husband of Amice) dieth, and she committeth Wast; the Writ of Wast shall be such.

Rex, &c. Si B. de C. fecerit, &c. tunc sum', &c. Amic', quæ fuit uxor, &c. quare cum, &c. eadem Amicia in boscis, &c. quas tenet ad vitam suam de præf. B. de C. ex assign. quam T. conf. et hæres J. D. de quo eadem Amicia illos tenuit ad eund. termin', ex dimiss. quam R. inde fecit præf. A. et I. quondam viro suo, ad vitam eorund. A. et I. ita quod post mortem eorund. A. et I. præd. bosci. N. filie J. D. ad totam vitam suam ulterius remaner', et post mortem i. suis N. iidem bosci rectis hæ. præd. J. D. remaner', inde fecit præf. A. fecit Vastum, &c.

And by this writ it appeareth, that he in the Reversion shall have a writ of Wast against the Tenant for life, where there is a mean Estate in Remainder for life to another.

C. & f. 54
S. E. 76. 6.

D. There is another Writ of VVast in this form.

Rex. &c. i. I. et C. fec', &c. tunc sum', &c. I. &c. quare, &c. eadem I. de omnibus, &c. quas tenet ad vitam suam per finem inde in Curia nostra coram W. de C. et sociis suis Justic. nostris

Writ of Wast.

de Banco per Breve nostrum inter præd. C. & I. R. de P. levat', & quæ post mortem præd. T. & I. præf. C. & I. & hered. de corpor' eorund I. & C. extant', remanere debent per formam Finis præd, fecit Vastum, &c.

And if a man leaseth Lands for term of life unto E. the Remainder to M. for life, and afterwards granteth the Reversion in Fee to one B. Father of R. whose Heir the said B. is; and afterwards the first Tenant for life dieth, and the Tenant in the Remainder entreth, and committeth Wast; now the Writ shall be:

Rex, &c. Si R. fec', &c. tunc sum', &c. I. de C. & M. ux. ejus, &c. quare cum, &c. iidem I. & M. in terris quas tenent ad vitam ipsius M. de præf. R. ex assign. quam I. de C. quæ terram præd' I. de E. ad totam vitam suam, ita quod post mortem ipsius I. de E. eadem terra præf. M. ad totam vitam suam habend. remaner', dimisit, inde fecit B. patri præd. R. cujus hæres ipse est, fecer' Vastum, &c.

And there are other forms of Writs in the Register which are not mentioned here for the length of them; *ideo quare librum.*

3. H. 6. 1.
Nota.

37. 6.
21 E. 3. &

27. contr.

16 E. 3.

West. 100.

contr.

And there is another form of Writ of Wast for the Lord by Escheat, who hath the Reversion by Escheat, &c.

And there is a Writ of Wast in the Register for him in the Reversion against Tenant by *Elegit* who hath Lands and Tenements in Execution for Debt or Damages. And so against Tenant by *Elegit* who hath Lands in Execution by Recognizance of Debt: and also against his Executors who hath Lands in Execution by *Elegit*. And it seemeth to stand with good reason that the Action doth lie.

But some say, that he against whom the Execution is sued shall not have an Action of Wast, because he may have a Writ of *Venire facias ad computandum*, &c. and there the Wast shall be recovered in the Debt; but by the Action of Wast he shall recover treble damages, and so it seemeth he shall not do by that Writ of *Venire facias ad computandum*.

And also if a man hath Lands in Execution by *Elegit*, and afterwards he in the Reversion granteth the Reversion unto a stranger in Fee; that the Grantee shall have an Action of Wast against the Tenant by *Elegit* seems reasonable; because the Wast is to his disinheretance, and he ought not to satisfy the Debt due by the Grantor.

And see 21 E. 3. in Title *Scire facias*, whether Recognisor had a *Scire facias* upon his Surmise that the Recognisee had levied all the Debt by cutting of Trees.

If a man have Common of Estovers in the Woods of another

another, and he who is Tenant and Owner of the Wood cutteth down all the Wood, he who ought to have the Estovers shall not have an Action of Wast, but shall have an Assise of his Estovers: for the Action of Wast doth not lie but upon a Lease made, or against Tenant by the Courtesie, or Tenant in Dower, or Gardian.

A If Gardian in Chivalry commit Wast, the Heir shall have an Action of Wast as well at full age as within age.

And if a man be in Ward unto the Lord by reason of the Use of Lands, because that certain persons were seised in Fee of the Lands holden by Knights service unto the use of his Father and his Heirs; now if the Gardian commit Wast, the Heir within age, or of full age, shall have the Action of Wast against the Gardian, and yet the Heir hath not the Reversion of the Lands, but the Use only. But that is given by the Statute of 4 H. 7. cap. 17.

And if the Gardian do commit Wast, he shall lose the Wardship; and if the Wardship be not sufficient to answer the Damages for the Wast, then he shall render Damages unto the value over and above the loss of the Wardship, by the Statute of Gloucester, cap. 5.

If the King commit the Wardship of the Heir in Ward unto another, and the Committee doth Wast; then upon a Surmise made thereof in Chancery, the King shall send a Writ unto the Escheator, to go to the Land, and see if Wast be done, and to certify the King thereof in the Chancery.

B If Escheators do commit Wast in Lands which they have in their hands in custody; the Heir within Age, or of full age, shall have an Action of Wast, and shall recover treble damages against them, and they shall suffer imprisonment two years at the least, at the King's pleasure. And so if Escheators do commit Wast in other Lands seised into the King's hands by Enquest of Office. Anno 36 E. 3. cap. 13.

C And Escheators, or other Gardians of Lands, in the Vacation of the Temporalities of Bishopricks or Abbies, shall do no Wast, &c. Anno 14 E. 3. pro Clero, cap. 4 & 5.

And if Tenant for term of life, or in Dower, or by the Courtesie, or for years, grant over their Estate unto divers unknown persons, &c. to defraud him in the Reversion, and afterwards Wast is committed; he in the Reversion shall have an Action of Wast against the first Tenant who took the Profits, &c. Anno 11 H. 6. cap. 5.

D There is another Writ of Wast which lieth betwixt two Tenants in common of Lands or a Wood in Fee simple, and the form of the Writ is such:

[59.]

Note, 12 H. 4. 3. per Hankford, in a Writ of Wast the Writ doth not recite the Statute, which proves that a Prohibition was against the Gardian at the Common Law.

O 2

Ren, 1

or for life. G. d. f. 200.

Rex, &c. Si A. fecerit, &c. tunc sum. &c. B. offens. quare cum iidem A. & B. teneant boscum de I. in N. pro indiviso, præd. B. de eodem bosco fecit Vastum, &c. ad exhæredationem ipsius A. &c. Et habeas tibi, &c. And this Writ lieth as well of Lands, Pisciary, Turbary, and the like, as of Woods when they are holden in common. See the Statute of *West. 2. Cum duo vel tres, &c. turbariam, cap. 22.*

The Heir within age shall have an Action of Wast against the Gardian in Socage.

The Heir at full age shall have an Action of Wast against the Kings Committee, &c.

687 2 H. 1. 25. If two have a Reversion unto them, and unto the Heirs of one of them, they shall joyn in an Action of Wast against Tenant for life.

28 H. 6. Gardian in Socage shall not punish Wast done by a stranger.

46 E. 3. 17. Wast shall be brought against Tenant for life, where there is a Mesne Estate for years between the Tenant for life and him in the Reversion.

687 And it appeareth by the Register, that the Writ of Wast shall be maintainable, although the Mesne in the Remainder for term of life be between the Tenant for life and him in the Reversion.

48 E. 3. 16. Where a Lease is made unto the Husband and Wife for life or years, there the Wife shall not be punished after the death of her Husband for Wast done by the Husband.

2 H. 4. 3. *Belk* M. 3 E. 3.

Old. Na. The Tenant may cut Trees to mend Houses, &c. and to do Reparations. But if Houses decay by the default of the Tenant, to cut Trees to amend them is Wast.

4 E. 3. VVast. 22 cont. Where Wast is done by the King's Enemies, or by Tenable, the Tenant shall not be punished for the same.

7 H. 6. 35 ac. Cutting of dead Wood is not Wast. And if a man cut Wood to burn, where he hath sufficient head Wood, it is Wast.

2 H. 6. 11 Also it is not Wast to suffer Lands to lie fresh, and not to manure them, and to suffer them to grow full of Thorns, &c. Also it is not Wast to fell seasonable Wood, which is used to be selled every twenty years, or within that time.

7 H. 6. 38. If a man fell Trees it is Wast: and if he suffer the Germans upon the Roots of the Trees to be again newly destroyed, the same is new Wast.

40 E. 3. 25. And if a man do not repair the Banks, by reason whereof the Land is drowned the same is Wast.

5 H. 6. 66. And

And if a man plough Meadow, &c. it is Wast. A Wall or Pale, which is covered with Thabe or Timber, may be Wast, if the Tenant suffer them to be uncovered, by reason whereof, &c. And the digging of Gravel, or Stone, or Coals, shall be said Wast. *C. d. f. 53*

Housebote, Haybote, and Firebote, do appertain unto a Termor of common right, and he may take Wood, for the same. *H. 21 H. 6*

O A Bishop, or a Master of an Hospital, or a Parson, shall not punish wast done in the time of their Predecessors. But an Abbot or Prior shall. *See 57 E.*

P Tenant in Tail, after possibility of Issue extinct, shall not be punished for Wast.

A Cutting down Willows in the sight of the Mannor is adjudged Wast. *P. 40. E. 3.* [60]

B Lessee for life, the Remainder in Tail, the Remainder in Fee unto the Lessee for life, if he do commit Wast, he shall be punished by him in the Remainder in Tail; and yet the Lessee for life hath the Remainder in Fee, but there is a Mesn Estate of Inheritance, &c. *50 E. 3. 3.*

C If a man cut Trees of the value of 3 s. 4 d. it hath been adjudged Wast. *14 H. 4. 11. 38 E. 3. 7.*

D If a man maketh a Lease for one year, or half a year, and the Tenant do Wast, the Lessor shall have Wast, and the Writ shall say. *Quas tenet ad terminum annorum*, and in the Count he shall shew the special matter. *Grange to the value of 40 s. wasted and yet no Wast say*

E A Termor may cut the Under-wood, growing under the great Woods and tall Woods; but if there be not any tall Wood, then he cannot cut the Wood. *P. 41 E. 3.*

F And a man may have Action of Wast, and Count upon divers Leases. *M. 44 E. 3.*

G The Gardian shall not be punished for Wast done by a stranger, &c. but a Termor shall, &c. *C. d. f. 54*

H If tenant in Tail lease the Lands for his own life, he shall have an Action of Wast against the Tenant, if Wast be done.

I The Grantee by Fine of the Reversion shall not have a Writ of Wast against the Tenant before the Tenant attorn: but if a Reversion escheat unto the Lord, he shall have Wast against the Tenant without Attornment. *Lit. 131.*

And so if the King grant the Reversion by Letters Patents, the Grantee shall have Wast without Attornment. *34 H. 6. 51. 6 E. 3. 17.*

And so if a man devise the Reversion unto another in Fee, upon Wast done, the Devisee shall have Wast without Attornment. *Attorn 13. 12 E. 4. 3.*

K And none shall have an Action of Wast but he who hath an

10 H. 7. 5. an Estate in Fee-simple, or in fee-tail. But a Parson or Prebendary shall have a Writ of Wast upon their Lease, yet some say that they have not the Fee-simple in themselves alone.

45 E. 3. 9. And if Tenant for term of life commit Wast, and afterwards alieneth in Fee, yet the Writ of Wast lieth against him: Otherwise it is if the Wast be done after the Alienation made, as is said; *tamen quere.*

3 H. 7. 11. 8. If an Abbot committeth Wast in Lands which he hath in Ward, and dieth, the Successor shall not be charged. But if he be deposed, the Successor shall be charged. *M. 49 E. 3.*

A Writ of Wast shall be maintainable against one upon a Lease made unto him until he be promoted unto a Benefice, and the Writ shall suppose *quod tenet ad terminum vite.* And so of a Lease made to endure from such a Feast unto such a Feast, the Writ shall suppose *quod tenet ad terminum annorum* in that case, & by the Court the special matter shall be shewed.

Destruction of Villains by Tillage, adjudged Wast.

Wast done by a Gardian unto the value of 20 d. was adjudged Wast, and the Plaintiff recovered. *H. 34 E. 3.*

40 Aff. 22. The Termor is not bound for to repair the Houses which are ruinous at the time of the Lease made unto him.

Wast 24. by *Knevi.* a house which was newly built and not covered was abated by the Gardian, and no Wast. But if a Frame which was once covered in the life of the Lessor, if the Lessee do erase it after his death; the Heir shall have Wast.

45 E. 3. 3. 20. If there be two Coparceners, and one hath issue, and dieth, and her Husband is Tenant by the Courtesie, and committeth Wast, his Son shall not have an Action of Wast against him without naming the other Coparcener: but if he bring such Writ, it shall abate. *Quod vi. P. 2 H. 6. Title Wast. C. 8. f. 198*

If there be Tenants in common *pro indiviso*, and one committeth Wast, the other two ought to joyn in an Action of Wast against the third. See for that, *M. 3 E. 2 Wast.*

If the Gardian commit Wast, and the Heir being within age, bringeth an Action of Wast, the Gardian there by shall lose the Wardship, and damages for so much as is wasted, besides the value of the Wardship which is lost; but if the Heir at full age do bring a Writ of Wast against him who was Gardian, and recover, then he shall recover treble damages against the Gardian, because the same is out of the Statute of Gloucester, which saith, that the Gardian shall lose

lose the Wardship; for he cannot lose the Wardship there; and therefore he is not in that case as Tenant in Dower or by the Courtesie are, who were punishable in Wast by the Common Law. *Quod vi. M. 12 H. 4. 3.* in the Title of Wast, the opinion of *Thirning*.

Writ of Estrepmēt.

U ^{3 H. 6. 16.} Here are two manner of Writs of Estrepmēt. One is when a man hath a real Action depending, as a *Formedon*, or a *Dum suit infra etatem*, or a Writ of Right, or such Action wherein the Demandant shall not recover damages; then he may sue this Writ of Estrepmēt against the Tenant, inhibiting him that he do not make Wast, nor strip, pendant the Action: and this is properly before Judgment is given for the Demandant.

X And another Writ of Estrepmēt lieth for the Demandant, where he hath Judgment to recover Seisin of Land, and before Execution sued by *Habere facias seisinam*; he may sue this Writ, that the Tenant do not wast or strip: and this Writ doth recite the Recovery and the Judgment, &c. And also the Demandant may have a Writ of Estrepmēt directed to the Sheriff, commanding him that he do not suffer the Tenant to do Wast or strip.

Trespas, and no Process of Utlawry, for that it is a Preeyre. 14 H. 7. 10 If the Defendant plead in arrest of Judgment, or Release be pleaded after Verdict, or if the Justices take advice of their Judgment, the party may have Estrepmēt, by *Read*, 2 H. 6. 13. 4 *El. Dy. 210.*

Y And some say that this Writ of Estrepmēt doth not lie [61] in such Action where the Demandant shall recover damages against the Tenant. But it seemeth reasonable that the Demandant have such Writ where he doth recover damages, as where not: for it may be that the Tenant is not of ability to satisfy the Demandant for his Damages. And also if the Tenant shall be suffered to let the Houses to fall to decay, or to pull them down, and to destroy the Parks and Chases, it should be very inconvenient.

A And in every real Action the Demandant may have a Writ unto the Sheriff, commanding him, that he see that the Statute which ordaineth the Estrepmēt be observed; and that he do not suffer the Tenant to do such strip: and by the like reason he may have the Writ against the Tenant, where he may receive damages &c.

B And if the Tenant do make a Feoffment hanging the Plea, the Demandant may have a Writ of Estrepmēt against the Tenant and against his Feoffee, &c. And by the

3 H. 6. 16.
Variance
from the
first Record,
for the reci-
tal of the
name, Town
or the like,
shall not a-
bate the
Writ, be-
cause it is
Original,
not Judicial.
3 H. 6. 16.
No age in
this Writ,
for it is in
nature of

28 H. 6. 8.
qn. 22 E. 3.
Estrepmēt 9.
Estrepmēt
brought a-
gainst the
Def. and a
stranger to
the Recove-

same reason it seemeth that he may have a Writ of Estrepmēt against the Tenant and those who are his Servants, naming their names, &c. although they have nothing in the Tenancy. *Quere tamen. Vid. T. 5 E. 2. tit. Estrepmēt.*

34 E. 3.
Estrepmēt
15. 15 Eliz.
Dyer 325.

In an Assise, and in every real Action, where the Demandant shall recover damages, he may have a VVrit of Estrepmēt for Strip made after the Judgment, and before Execution: but for Corn cut and carried away after Judgment, and before Execution sued forth by the Demandant, the Demandant shall not have a Writ of Estrepmēt. *Quere* what remedy he shall have: it seemeth none; for the Tenant may take the Profits of the Lands before Execution, as I think, for it shall not be said Estrepmēt, if not that the Tenant do such a thing which shall be said VVast if a Termor had done it.

18 H. 8. 5.
Note, A
man cannot
have this
VVrit be-
tween the
award of

And when a man purchaseth his original Writ directed to the Sheriff, then may he purchase his VVrit of Estrepmēt against the Tenant, if he will; or a Writ unto the Sheriff, commanding him to see that the Statute which ordaineth the Estrepmēt be observed.

the VVrit and the return; for the Statute giveth it pendent the VVrit, and it is not pendent till returned. See 12 R. 2. Estrepmēt 6 by *Charlton*, he shall not recover damages for VVast before the Judgment against the Tenant of the Land.

And if a man sueth a Writ of Right unto the Lord of a Court-Baron, there he may sue a writ out of the Chancery directed to the Sheriff, that he see that Wast be not done, &c. or he may sue a Writ out of the Chancery directed to the party himself, commanding him that he shall not do Wast, &c. and an Attachment thereupon. And when the Writ is depending in the Common Pleas, then the Demandant shall have the Writ of Estrepmēt out of the Common Pleas, or out of the Chancery, at his Election.

3 E. 6. 13.

And the Writ may be directed unto the Sheriff and the party; or he may have several Writs, one to the Sheriff, and the other to the party.

3 H. 6. 16.
12 R. 2. Br.
Estrepmēt
13. they
were at if
sue, if it
were before
the delive-
ry; or after

And hanging the Action the Tenant may do Wast, and shall not be punished, because it is before the Prohibition delivered unto him; but only for that Wast done after the Prohibition delivered.

And if a stranger of his own wrong do Wast after the Prohibition delivered unto the Tenant, and against the Tenants Will, then the Tenant shall not be punished for that Wast, &c.

- I In a *Scire facias* to execute a Fine, if the Tenant do com- mit VVast, the Demandant may sue a VVrit of Estrepm^{33 H. 6. 6.} ment, and afterwards sued a Writ of Estrepm^{14 H. 7. 7.} against the Tenant for the wast done by him after the Verdict, and before Judgment; and it was awarded, that the writ was well brought. *H. 21 E. 3.* ^{2 H. 6. 13.}
- K In an Assise, the Tenant did wast after Verdict, and before Judgment given, and afterwards the Plaintiff had Judgment, and afterwards sued a Writ of Estrepm against the Tenant for the wast done by him after the Verdict, and before Judgment; and it was awarded, that the writ was well brought. *H. 21 E. 3.*
- L And a writ of Estrepm against the Tenant for wast done after the Judgment, and before Execution, was maintainable at the Common Law before the Statute. ^{33 H. 6. 6.} *cont. by some.*
- M And if a *Formedon* be brought of a Mannor, and after the Estrepm is brought against the Tenant, and afterwards a Tenancy doth eicheat unto the Mannor, and the Tenant doth commit VVast in that Mannor, he shall be punished for the same, and yet it is not demanded by the VVrit, but Sureties were demanded by the VVrit in the name of the Mannor, and the Land cometh in lieu of the Services, &c. ^{15 Eliz. Dyer 325 ac. 4 E. 3. 32. Br Estrepm 12.}
- N If a man do recover in a VVrit of VVast, he shall have a VVrit of Estrepm against the Defendant for VVast done after the Judgment and before the Execution. ^{14 H. 7. 10. Custer and Keblo.}
- O In Attaint in the Common Pleas, the Plaintiff shall have the VVrit of Estrepm against the Defendant out of the Common Pleas, if he will, or out of the Chancery. ^{21 E. 3. 3. Br. Estrepm 7.}
- P If a man sue a *Juris Utrum* against several Tenants, as he may, or a *Scire facias* against several Tenants, there he may have an Estrepm against any of the Tenants, and not against them all. And so it seemeth if a *Formedon* be brought against two Tenants joyntly, the Demandant may have an Estrepm against one Tenant only. ^{Quare, if Justices of Assise may award this VVrit. 34 E. 3. Estrepm 14. 5 E. 2.}
- Estrepm 11. Joynt-tenancy at the original is a good Plea, otherwise to say, that he was Joynt-tenant at the time of the Judgment given.
- Q And in a *Juris utrum* sued in London, a man shall have a VVrit of Estrepm directed to the Sheriff of London, as appeareth by the Register.

Writ de Partitioe facienda.

- R **T**HE VVrit de Partitioe facienda is such.
Rex, &c. Si A. fecerit, &c. sum. B. &c. ostens. quare quum eadem A. et B. insimul et pro indiviso teneant tres acras terre cum pertin. de hereditate qua fuit M. matris predict. A. et B. cujus.

H. 5. 15.
Quare if
Coparcenery
of Lands in
ail shall
ave a
Writ of
Partition.

[34.]

cujus hered. ipse sunt, in I. eidem B. Partitione nostra inde inter eas secundum Legem & consuetudinem regni Angl. faciend. contradic' & eam facere non permittit, minus juste, ut dicit, Et habeas ibi Sum'. & hoc Breve.

And if the Husband hath one part of the Land by purchase, and the other parcel in the right of his Wife, and another Coparcener hath another part as one of the Heirs of the common Ancestor; then the Husband and the Wife shall have a Writ of Partition against the three Coparceners, and the Writ shall be such:

Rex. Vic', &c. Si I. & M. uxor ejus fecer', &c. sum' M. &c. ostens. quare cum idem I. ut in jure ipsius M. de purparte ipsorum de Manerio de T. quod fuit A. patris prædicti. M. cujus una hered. ipsa est, contingent. idemque I. virtute Feoffamenti sibi per F. filiam & alteram heredem prædicti A. de purparte ipsius F. de eodem Manerio contingent. facti, ac præf. M. filia & tertia her. ejusdem A. insimul & pro indiviso teneant Manerium præd. cum pertin', eadem M. Partitione inde, &c.

And there is a Rule in the Register such, that is to say, A That Anno 12. at York was sealed a Writ de Partitione facienda betwixt strangers; and there it was said, that a man should have the same in every case without de hereditate in the Writ: and it's there said, that that Writ was never seen before.

And if a man will sue a Writ of Partition for Lands in London, then he shall have a Writ unto the Major and Sheriffs of London in the nature of an Audita querela, and the Writ shall be such:

Rex Majori & Vic. Lond. salut'. Ex parte S. de H. & I. uxor. ejus nobis est ostens. quod cum ipsi R. & S. insimul & pro indiviso teneant unum mesuag. cum pertin. in Lond'. idem R. & S. Partitioni inde secundum Legem & consuet. ejusdem Civitat. faciend. contradic', & eam fieri non permitt', in ipsorum S. & I. dampnum non modicum & gravamen, & contra Consuetud. in Civitate illa hætenus obtentam & approbatam: Vobis igitur præcip', quod audita ipsorum S. & I. in hac parte querel', & vocatis coram vobis R. & S. auditisque hinc inde partium rationibus, iisdem S. & I. in præmissis ulterius fieri faciatis quod de jure & secundum Consuetudinem Civitatis prædictæ fuerit faciend', ut hætenus in casu consimili fieri consuevit. Teste, &c.

And by that it appeareth that by the Custom of London C one Joynt-tenant, or Tenant in common, shall have a Writ of Partition against his Companion.

And Partition may be made in the Chancery, where one of the Coparceners is in ward to the King.

And

D And Partition may be made of an Advowson or of a Reversion, that one shall have the Reversion of such Acres, and another shall have the Reversion of others Acres; and such Partition may be without Deed.

11 H. 4. 61.
28 H. 6. 2.
9 Aff. 23.
3 E. 4. 9.
45 E. 3. Par-
titio 7.

E And it appeareth in 3 E. 4 that Tenants in common may make Partition by Deed.

F And Partitions betwixt husbands and wives shall bind the wives, if they be equal. And by Partition made of a Manner without speaking of the Advowson, the Advowson doth remain in common. And Joynt-tenants do make Partition of a Mill without Deed, and adjudged good. Trin. 47 E. 3.

9 H. 6. 5.
19 H. 6. 25.
2 H. 7. 5. ac.
47 E. 3. 24.
3 E. 4. 9.
19 H. 6. 25.
that they
cannot
21 E. 3. Par-
tition 9.

G If one Coparcener doth lease her part unto another Coparcener for years, yet she shall have a writ of Partition against her Sister during the term of years.

H After Partition in the Chancery, she which is within age, after she cometh of full age, if she have too little, shall have a writ *de Partitione faciendā* against her Sister; or a *Scire facias*, upon the Record of the Partition in the Chancery, against her Coparcener, which shall be returned into the Chancery, &c. to shew wherefore new Partition or Extent shall not be made, &c.

21 E. 3. 31.
partition 10
Thorp.
The reme-
dy is only
by *Scire fa-
cias*.

I And Partition betwixt Coparceners, that one shall have the occupation of the Land from *Easter* until *August*, solely and in severalty to her self, and then that the others shall occupy the Lands solely and severally from *August* to *Easter*, yearly to them and their Heirs, is adjudged a good Partition in the time of King E. 1.

10 E. 1. Par-
tition 21.
C. Lit. 4. Hal.
34 Eliz.
VValden &
Bridgwaters
Case ac'.

K And by the same reason it seemeth a good Partition, if two Coparceners have two Mannors by descent, and they make a Partition, that one shall occupy one Mannor one year, and the other the other Mannor for that year, and then that he who occupied one Mannor one year, should occupy the other Mannor for the year following; and so they and their Heirs shall change every year, and occupy the Mannor which the other Coparcener did occupy the year before.

And also Coparceners may make partition for term of life, or for years.

M And also partition, that one shall have the Land which is entailed, and the other the Fee-simple Land, is a good partition; and the process in this Writ is *Sum'*, *Attachment*, and *Distress* infinite.

V. 57 Lit.
ac. 20 H. 6.
14.

Writ de Excommunicato capiēdo.

20 H. 6. 1.
not good by
his ordinary
Seal.

8 H. 6. 3.

The Arch-
deacon doth
certifie and
it is said that
he was Or-
dina y im-
mediate, &
yet it is
doubted
whether
good or no,
because the
King cannot
have benefit
to these Tem-
poralties, for
that he hath
not Tempo-
ralties as a
Bishop hath

[63]

BEfore this Writ shall be granted, the Contumacy and N Contempt made by the party unto holy Church ought to be certified into the Chancery by the Bishop, by Letters under his Seal. But this Certificate by Letters may be made into the Chancery by a Bishop elect, before he be consecrated : And also the same may be certified by Letters of the Chancellor or Vicar-General, when the Bishop is beyond the Seas, or out of his Diocess, *in remotis agend'*, &c. And although that the Bishop be in his Diocess, yet the Certificate of the Vicar-General by his Letters unto the Chancery, reciting that the Bishop is *in remotis agend'*, is good, and shall not be traversed. And in time of Vacation of the Bishoprick, the Certificate ought to be made by the Gardians of the Spiritualties for the time being, or by the Archbishop, &c. if he be Gardian of the Spiritualties,

And upon this Writ he shall have an *Alias*, and a *Pluries*, O and if they are not answered, an Attachment against the Sheriff, directed unto the Coroners, returnable in the Kings Bench.

And if the Excommunicate hath made satisfaction unto A the Church for his Contumacy and Contempt, &c. then the Bishop or Vicar-General, or the Gardian of the Spiritualties, &c. as before is said, ought to certify the King in the Chancery, that the party hath made satisfaction unto the Church for the Contempt, &c. and thereupon he shall have such writ to the Sheriff, *viz.*

Rex Vic. Linc. salut'. Cum S. & I. quos ad denunciationes Decani & Capituli Ecclesie beati Petri Ebor. sede vacante, or thus, ad denunciation. vener. Patris A. Winton Episcopi, tanquam excommunicatos, & claves contempnentes, per corpora sua, secundum Consuetud' And, *per te iusticiari preceperimus, donec sancte Ecclesie tam de contemptu quam de injur. ei illata ab eis fuerit satisfact'* ; *jamque ex ipsis Decan. & Capitulo, or thus, ab ipso Episcopo Absolution. beneficium in form. meruerunt obtiner'*, *sicut iidem Decanus & Capitul'*, or thus, *sicut idem Episc. per Literas suas patentes nobis significaver', vel significavit : Tibi precipimus, quod ipsos S. & I. a prisona qua detinent, si ea occasione, & non alia, detinent in eadem, sine dilatione deliberari facias, &c.*

And if the Sheriff will not execute that Writ, he shall have B an *Alias* and a *Pluries*, and Attachment against the Sheriff directed unto the Coroners, returnable into the Kings Bench.

And

C And if the party excommunicated, who is so taken and in Prison, offer sufficient Caution or Surety to abide the Ordinances and Rules of the holy Church, and the Judges there and the Ordinary do refuse for to take such Caution or surety, then he may have another Writ unto the Bishop to admit of his Caution, and the Writ is such :

Writ de Cautione admittenda.

Rex venerabili, &c. Ex parte A. Cum ad denunciationem vestram tanquam excommunicatum & claves Ecclesie contempnen, per corpus suum, secundum Consuetudinem Ang^{ie}, per Vic. nostrum Lincoln, &c. iusticiari preceperimus, donec sancte Ecclesie, &c. esset satisfactum; Nobis est ostensum, quod licet idem A. vobis frequent. obtulerit idoneam Cautionem de parend. mandatis Ecclesie in forma juris, ut per hoc Absolutionis beneficium consequi posset, vos nihilominus Cautionem huiusmodi ab eo admittere haecenus recusastis, de quo miramur: Et quia nolumus quod idem A. diutius in prisiona contra iustitiam detineatur; vobis mandamus, quod, accepta a prefato A. Cautione predicta ipsum A. a prisiona qua occasione premissa detinet. deliberari mandetis, alioquin quod nostrum est in hac parte exequemur, &c.

D And if the Bishop will not send unto the Sheriff to deliver the person so excommunicated then he shall have such a Writ out of the Chancery for to deliver him.

Rex Vic^{us}, &c. Ex parte A. qui ad denunciationem venerabil^{is}, &c. and rehearse the Writ sent before unto the Bishop for deliverance of the Prisoner. &c. Et quia nolumus quod idem A. diutius in prisiona contr. iusticiam detineatur; Tibi precipimus, quod in propria person. tua accedas ad prefat. Episc^{um}, & ex parte nostra moneas & efficacit^{er} indices, ut, accepta ab eodem A. Cautione red^{da}, ipsum A. a prisiona predicta, mander deliberari. Et si idem Episcopus vel Custos in praesentia tua id facere noluerit, tunc ipsum A. a prisiona predicta, si ea occasione, & non alia detineatur in eadem, deliberari fac^{as}. Teste, &c.

E And upon this Writ he shall have an *Alias* and a *Pluries* unto the Sheriff; and if he do not serve the Writs, he shall have Attachment against the Sheriff, but so shall he not have against the Bishop, &c.

F And if the Bishop do certifie by his Letters into the Chancery, that he hath sent unto his Official or Archdeacon to absolve the party Excommunicate, then the party shall have a Writ unto the Sheriff rehearsing those Letters, &c. Vobis precipimus, quod praed^{ictus} A. cum vobis constare poterit ipsum ab Excommunicatione sua praed^{icta}. per praed^{ictum} Offic. vel Archidiacon. absolvi,

Writ de Cautione admittenda.

absolvi, a prison. quā detinet, si eā occasione, & non aliā, detineat. in eadem. sine dilatione deliberari fac, &c. Test, &c.

And upon that Writ he shall have an *Alias, Pluries*, and Attachment against the Sheriff, if he do not serve the Writ.

And yet it seems that the Official or Archdeacon to whom the Bishop hath sent his Letters to absolve the party is not bound to certifie the Sheriff that he hath such Letters; but the Sheriff ought to go or send to them to know the truth thereof, and thereupon to deliver the party: and the Bishop, or he who Excommunicated him, and upon whose Certificate the party was taken, may command the Sheriff to deliver him, as it appeareth by the Writs in the Register.

[64.] And if a man be excommunicated, and taken by a *Significavit*, and after offers Caution unto the Bishop to obey the Church, and the Bishop do refuse, for which he sueth a Writ to the Sheriff, to go unto the Bishop, and to warn him to take Caution, &c. now if the Bishop think in his conscience, or standeth in doubt whether the Sheriff will deliver him by that Writ, the Bishop may purchase another Writ directed to the Sheriff reciting the case, and in the end thereof, *Tibi precipimus, quod ipsum A. a prisona prædiç, nisi in presentia tua cautionem pignorat. ad minus eidem Episc. de satisfaciend. obtulerit, nullatenus deliberes absque mandato nostro, seu ipsius Episcopi, in hac parte speciali. Teste, &c.*

And the Bishop do take Caution of the party to obey the holy Church, then the Bishop may certifie the same into the Chancery, and thereupon the party shall have a Writ unto the Sheriff for to deliver him.

And if the Sheriff do deliver such persons Excommunicate without order of Law, then upon complaint of the Bishop into the Chancery, he shall have a new Writ unto the new Sheriff rehearsing the matter, commanding him to take the said person, and to detain him in prison; and also in the same Writ he shall command the Sheriff, to make the old Sheriff to answer the King in his Bench for the contempt: And if the Sheriff who setteth the party at large be yet Sheriff, then it seemeth the Writ shall be awarded unto the Coroners to apprehend the party Excommunicated, and to cause the Sheriff to appear, &c. as before is said.

And if a man be excommunicated before the Chancellor of Oxford, &c. and the Chancellor doth certifie this excommunication into the Chancery, &c. upon the same Certificate the King shall award a *Significavit* unto the Sheriff, to apprehend the party; and the Writ shall be such: *Quum nos*
de

de gratia nostra speciali concefferimus, quod Cancellar. Universitat. Oxon', qui pro tempore fuerit, per Literas suas patentes Cancell. nostro Angl. pro tempore existent. significare possit & certificar. de nominibus singulorum de jurisdictione pref. Cancellar. Oxon. qui majoris Excommunicationis vinculo fuerint innodati, & quod dict. Cancell. nostro, qui pro tempore fuerit, Brevia nostra fieri & sub magno Sigillo nostro consignari fac. pro captione eorum qui sic per dictum Cancell. Oxon. fuer. excommunicati, & per quadraginta dies perseveraver. in ead. ad signif. sive certif. ipsius Cancell. Oxon. supradict', prout in Liter. nostr. patent. inde confectis plenius inde continet'; ac Joh. F. Cancell. Universitatis pref', &c. per Literas suas, &c. quod W. de B. &c. sue jurisdictionis propter suam, &c. as in the Writ. And quere if the University of Cambridge have such priviledge; it seemeth they have.

D If a man be sued in the Spiritual Court, and he purchase a Prohibition and deliver the same, and notwithstanding they proceed, for which cause the Defendant sueth an Attachment upon the same Prohibition, and pendant the Attachment, the Defendant in the Spiritual Court is excommunicated, and the same certified into the Chancery, by reason whereof a *Significavit* is awarded unto the Sheriff against the Defendant for to take him: now the Defendant may come into the Chancery, and shew how that he had a Prohibition, and an Attachment thereupon against the party, and that pendant the Attachment he is Excommunicated, and the *Significavit* awarded to take him. Now upon that he shall have a *Supersedeas* directed unto the same Sheriff, reciting all the matter, commanding him not to take him; and if he do take him for the occasion aforesaid, that he deliver him *donec Placitum dicti Attachiament. fuerit discuss.* &c. And this Writ shall issue out of the Chancery, if the Attachment be not returned into the Kings Bench. But if the Attachment be returned into the Kings Bench, then he shall have this Writ of *Supersedeas* out of the Kings Bench, or out of the Chancery, at his pleasure. And it ought to appear by the Certificate of the Bishop, that he hath been Excommunicated by the space of forty days, before the *Significavit* shall be awarded.

And if a man be sued in the Spiritual Court, or the Bishop sue or cite him *Ex officio*, and Excommunicate him, and certify the same into the Chancery, and upon the same a *Significavit* is awarded unto the Sheriff for to apprehend him, &c. and afterwards the Official by Letters certify into the Chancery, that he hath appealed from that Sentence unto

unto the Court of Rome, or unto the Court of Canterbury, &c. then upon that Certificate he shall have a Writ of *Superfedeas* directed unto the Sheriff, reciting that he hath appealed, commanding him not to apprehend him *pendente Appellationis negotio supradict'*; or thus, to surcease, *donec de Consilio nostro aliud inde duxerimus ordinand'*, *vel usque talem diem*; or thus, to surcease, &c. and he hath apprehended him *ea occasione, tunc ipsum a prisona præd' qua, &c. deliberari faciat*, &c.

And after the *Significavit* awarded against the party, if he bring the Popes Bulls into the Chancery, testifying that he hath appealed from that Sentence, &c. he shall thereupon have a *Superfedeas* unto the Sheriff; and in the *Superfedeas* it behoveth not to make mention of the Popes Bulls, but to say, *quod sicut per instrumenta publica*, &c. And he ought to prove his diligence in suing his Appeal by Witnesses, or by Oath, and within the year of the time of his Appeal sued. And the Rule in the Register is, Writs of *Superfedeas* (*hanging Appeals*) ought not to be; if it do not appear upon Record in the Chancery that the *Significavit* is granted and passed, &c.

And this Writ of *Significavit* doth not lie but where a man is excommunicated by a special name, and in a special Suit against him by the Ordinary *Ex Officio*, or by the party, for that is called *Sententia majoris Excommunicationis*, and upon Certificate thereof in the Chancery doth the Writ lie. But where he is not especially excommunicated, &c. although that the Bishop certifie that he is excommunicated in *Sententia Excommunicationis*, upon that this Writ of *Significavit* doth not lie, for they ought to express the cause, and sue against him specially in the Certificate.

Upon an Excommengment certified by the Pope's Bulls a *Significavit* shall not be granted.

[53] If a Bishop certifie an Excommengment into the Chancery made in time of his Predecessor, and the Contumacy, &c. he shall have a *Significavit* thereupon: But upon the Certificate of the Commissary, or Official, of an Excommengment in the Chancery, and of the Contumacy a *Significavit* shall not be granted; nor upon the Certificate of an Abbot, who hath ordinary Jurisdiction, of an Excommengment in Chancery, a *Significavit* shall not be granted.

If a Bishop certifie in Chancery, that another Bishop hath certified him that the party is Excommunicate in his Diocess, and so hath remained by the space of forty days;

the same Certificate is void, and a *significavit* shall not be granted thereupon.

B If a man be Excommunicated in the Spiritual Court, and the Bishop certifieth the same in the Chancery and hath a writ of *Significavit* directed unto the Sheriff to apprehend the Party, and the defendant do appeal unto the Court of *Rome*, and hath Bulls and Instruments exhibited into the Chancery to prove the same; then upon these Bulls, &c. shewed in Chancery he shall have a special *Scire facias*, rehearsing all the matter directed unto the Sheriff, to warn the party at whose Suit he was Excommunicated to appear in the Chancery at a certain day, to shew cause why he ought not to surcease to apprehend the party so Excommunicated depending the same Appeal; and also commanding the Sheriff to take sufficient Sureties, who will answer Body for Body for him who is so Excommunicated, to pursue, &c. and to do unto the party as the Court shall award, and that then he do surcease to apprehend him. And if the Sheriff return the Writ of *Scire facias*, that he hath warned the party, and hath sent that Writ unto the Bailiff of the Liberty, who had given him answer, that he had warned the party at whose Suit he was so Excommunicated, to appear in the Chancery at the day given by the Writ, &c. now if the party who was returned warned doth not come to appear, then he who was Excommunicated shall have another Writ unto the Sheriff for to deliver him, &c. if he hath apprehended him; and if he hath not taken him, that he do surcease for to apprehend him, &c.

C And if a man be Excommunicated by the Bishop, and after the Vicar-General certifieth the same into the Chancery, because the Bishop is *in remotis*, for which a *Significavit* is granted, and he is taken by it; and then he who is apprehended, by his friends, sheweth in the Chancery, how that he hath appealed unto the Court of *Canterbury*, which he followeth with effect: upon this Surmise he shall have a Writ unto the Sheriff who hath the party Excommunge in his custody, commanding him that he warn the Bishop or the Vicar General, and him who sued the Process against the party Excommunge, to appear in a certain day in the Chancery, to shew whereof the party should not (*pendente Appellatione*) be delivered; and also to cause the party Excommunge under safe custody to come, and to do as the Court shall consider in the said Cause.

D If the Bishop do Excommunicate a man, and certifieth the same into the Chancery, and thereupon a *Significavit* is awarded,

awarded, and the party taken thereby, and he sueth Appeal in the Court of *Canterbury*, or of *Rome*, &c. and hath a *Scire facias* against the Bishop as aforesaid, and against the party, to answer in Chancery, and shew cause why he should not be delivered; by which the Bishop and the party are warned, and appear not, for which cause the party is delivered: now if he who is Excommunicated will sue any Action in the Common-Pleas, or in the King's Bench, or elsewhere, if he think the other party will plead the Excommunication against him in the Common Pleas or elsewhere, then he shall have a special Writ of *Significavit* unto the Justices of the Court where he sueth, rehearsing all the matter as aforesaid, &c. commanding them to proceed *secundum Legem & consuetudinem Regni*.

If the Bishop certifie into the Chancery an Excommunication made at the Suit of any one, and thereupon a *Significavit* is awarded, and the party apprehended; now he who is apprehended may by his friends shew in the Chancery that he sued an Appeal from that Sentence in the Court of *Canterbury* with effect, and by *Scire facias* against the Bishop, and the party at whose Suit he was Excommunicated, returned at a certain day into the Chancery: and thereupon he shall have a Writ unto the Sheriff, rehearsing all the matter, commanding him thereby to warn the Bishop and the party to be in the Chancery at the day of the Return of the Writ, to shew what they can say wherefore the party shall not be delivered; and also by the same writ commanding the Sheriff that he take sufficient Sureties of the party Excommunicated to appear in the Chancery at the same day, and to carry him back again unto prison, if the Court at the same day shall so think fit; and in the mean time to let him go at large by his Sureties, &c. and then if at the day of the return of the Writ the party excommunicated doth not appear, nor his Bail, then shall a new Writ be awarded unto the Sheriff to apprehend the party Excommunicated again, &c. *donec sancte Ecclesie tam de contemptu quam de injuria ab eo fuerit satisfacti*; and also to arrest the Bail, to appear before the King in his Bench at a certain day, &c. *ad satisfaciendum tam nobis quam pref. Episcopo*, and him at whose suit he was Excommunicated; and farther to do as the Court shall award. And if at the day given in Chancery by the Writ of *Scire facias*, the Bishop, and the party at whose Suit he was Excommunicated, do appear, and also he who was Excommunicated, and the matter cannot be determined that day: then Day shall be given over

†

unto

unto both parties, at a certain day at another Term, &c. and then the party Excommunicate shall have a special *Superfedeas* unto the Sheriff, rehearsing the whole matter, commanding him that he do not apprehend him till that day, &c. if he have not other commandment from the King, &c.

A There are other Writs in the Register which are called Writs of *Significavit*, because they shall not be granted before that the Bishop hath made Certificate by his Letters under his Seal of the matter in the Chancery, upon the which the Writs shall be so granted. And the Writ is, where a man is a Clerk convicted for Felony, and afterwards makes his Purgation; now the Bishop shall certify this Purgation into the Chancery by his Letters, &c. and thereupon the Clerk convicted shall have a special Writ out of the Chancery directed unto the Sheriff, to restore him to his Goods and Chattels.

[66.]

Rex Vic. Lincoln. salut. Cum C. de P. Persona Ecclesie de R. nuper de raptu uxoris S. & de asportac. bonorum suorum, coram dilecto & fideli nostro W. & socijs suis Justic. nostris, prout mos est, eid. Episcopo liberatus, ibidem innocentiam suam super eodem crimine coram eodem Ordinario legitime purgaverit, sicut idem Episc. per Literas suas patentes nobis significavit, Tibi precipimus, quod eid. C. terras, bona & catalla sua per te in manum nostram occasione premiss. capta, nisi fugam fecerit ead. occasione, sine dilatione restituas, de gratia nostra speciali. Teste, &c.

And the like Writ for the Heir of the Clerk, after his death, to deliver the Lands unto him, &c. and in the end of the Writ are these words, *sine dilatione de gratia nostra speciali*; by which it seemeth that these words, *de gratia nostra speciali*, are not necessary words, but words of form for the Kings Honour, and that the King of right ought to make such restitution.

B And if a man do demand his Clergy before the Justices, and reads as a Clerk, and the Ordinary is demanded, and *V. 4. H. Dy.* cometh not, for which the Justices command the Clerk to *21 s. Scamf.* Goal again, &c. now at the Suit of the Ordinary, or of his *108.* Vicar-General, unto the King or his Chancellor, he shall have a Writ out of the Chancery directed to the Justices of Goal-delivery, reciting the matter, commanding them that they send unto the Goaler to deliver him unto the Ordinary.

C And if a man be taken out of a Church or out of Sanctuary against his will: now if the Bishop certify the matter by his Letters Patents under his Seal into the Chancery, &c. desiring restitution; then the King shall send his Writ unto the

Writ de Homine replegiando.

the Justices of Goal-delivery, reciting the matter, commanding them to bring back the party to the place from whence he was taken.

If an Abbot or Prior certifieth by his Letters under his Seal, that his Monk, Frier, Canon, is vagrant out of his Order, &c. in the Country; then upon that Certificate he shall have a Writ unto the Sheriff, to arrest and apprehend him, and to deliver him unto his Abbot or Prior, &c. or to their Attorney, to chastise him according to the Rule of his Order, &c.

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IN divers Cases a man shall not have this Writ, although he be taken and detained in prison: As if a man be apprehended for the death of a man, or be taken by the Kings command; or if a man be apprehended by the command of the Chief Justice, as it appeareth by the Register. But the Statute of *West. 1.* is, that he shall not be replevisable if he be taken by the command of the Justices, and doth not say of the chief Justice.

And also if a man be taken by the command of the Justices of the Forest, or if a man be out-lawed, or if a man abjure the Realm, or if a man be Approver, or if a man be taken for Felony with the manner; or those who break the Kings prison, or those who are common or known Thieves or those who are appealed by Approver so long as the Approvers live, if they be not of good fame, or for burning of houses feloniously, or those who counterfeit the Kings money, or the Kings Seal, or those who are taken by Certificate of the Bishop by a Writ *de Excommunicato capiendo*, or those who are apprehended for Treason, or those who are convicted by a Writ of *Redisseisin*, &c. all these persons are not bailable by this common Writ *de Homine replegiando*. But first they ought to make their Fines, or agree with the King, and thereupon to have a special Writ to the Justices, or those who do keep them in Prison, reciting how they have been fined, commanding them for to deliver them.

And if two or three men be taken and imprisoned, they may sue a joint Writ *de Homine replegiando*. And yet *H. 8. H. 4. 31.* such a Writ sued by two was abated: but yet it seems the Law is, they may sue jointly, and the Writ shall be such:

Rex Vic. Lincoln', &c. Præcipimus tibi, quod juste & sine dilat. repleg. fac', B. C. & D. quos tu ipse cepisti, & captos tenes ut dicitur; vel, quos D. & E. ceperunt. & capt. tenent, ut dicitur;

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8 H. 4. 21.
but 8 H. 4.
16. cont.
See 78 D. &
9 H. 4. 2.

dicitur; nisi capti fuerint per special. præcept. nostrum, vel capitalis Justic. nostri, vel pro morte homin', vel pro Foresta nostra, vel pro aliquo alio recto, quare secundum consuet. Angl. non sint repleg'; ne amplius clamorem inde audiamus pro defectu justitiæ. Teste, &c.

And upon that he shall have an *Alias* and *Pluries*, and Attachment, if need be. But if he who apprehendeth the man do claim him as his Villain, and the same is returned by the Sheriff upon the *Alias* or the *Pluries*, then the Plaintiff shall have another Writ of *Pluries* to the Sheriff thus:

Rex Vic', &c. Quum tibi plur' præceperimus, quod injuste, &c. W. quem H. co'it, & capt. tenet, ut dicitur, nisi capt. esset, &c. non sit replegiabilis, vel nobis causam significares, quare, &c. ac tu nobis retornasti, quod accessisti ad Manerium prædict' H. ad replegiand. ibidem præd. W. juxta tenorem mandati nostr. præd', sed præd' H. deliberation. corporis ipsius W. non fieri permisit, eo quod asserit ipsum W. esse nativum & fugitivum suum Manerij sui præd. clamando jus nativitatis & servitutis in persona ipsius W. infra dominium Manerij sui, &c. Nos volentes quod præd. W. si liber homo sit, per hujusmodi caption. & clameum lege communi destituit', tibi præcipimus, quod si pr. d. W. invener. tibi sufficient. Caution', &c. essendi coram nobis a die S. Mich. in xv dies, &c. ad respond. præf. H. si, &c. tunc ipsum W. interim repl. fac'; juxta tenor. mandatorum nostrorum, &c. Et nihilominus si præd. W. fecerit te secur. de clam. suo, &c. tunc pone per Sad', &c. præd. H. quod sit coram nobis ad diem prædictum, præd. W. de captione & clameo præd. resp. Et habeas ibi nomina Pleg', & hoc Breve, &c.

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And in the same manner it shall be done in a *Homine replegiando*: if the Defendant claim the Plaintiff as his Ward, then upon that returned at the *Pluries* by the Sheriff, the Plaintiff shall have a special Writ as aforesaid, reciting that he holdeth the same Land of the Defendant by Socage, and not by Knights-service; commanding the Sheriff for to deliver him, and to admit the Defendant by Pledges to appear at a certain day, as afore is said, to answer unto the Plaintiff, &c.

And if a man be taken within the Cinque-Ports, then he shall have a Writ *de Homine replegiando* directed unto the Constable of Dover, and unto the Warden of the Cinque-Ports, or his Lieutenant, in the nature of an *audita querela*, and the Writ shall be:

Rex dilecto, &c. Constabular. Castri sui Dover' &c. & Custod. Cinque portuum suorum, vel ejus locum tenenti, salutem Mandamus,

Writ de Homine replegiando.

damus vobis, quod audita querela A. quem B. cepit, & infra libertat. Portuum prædict' captum tenet, ut dicitur, vocatisque coram vobis partibus præd', auditisque hinc inde eorum rationibus, ipsum A. si secundum Legem & Consuetud' Portuum prædict' replegiabilis fuerit, replegiari faciatis, nisi capt. sit per speciale præceptum nostrum, vel capitalis Justic' nostri, &c. ne amplius inde clamorem audiamus pro defectu justitiæ, &c.

And if a man be taken by the Officers of the Forest, then he shall have a Writ de Homine replegiando unto the Keeper of the Forest, in such form, viz.

Rex dilecto & fideli suo W. de B. Custodi Forestæ suæ citra Trent', vel ejus locum tenenti in Foresta de S. Mandamus vobis, quod si A. & B. capti & detenti in Foresta de S. pro transgr' Venationis per ipsos facta, ut dicitur, unde indistat. sunt, inven' vobis, viz. uterque eorum, duodecim probos & legales homines de Balliva vestra, qui eos manucaptant habere coram Justic. nostris proxim' itinerantibus ad Placita Forestæ in Com. N. cum in partes illas venerint, ad stand. recto de transgr' præd'; tunc ipsos A. & B. si secundum Ass. Forestæ replegiabiles fuer', præd. xij. interim tradas in ball', sicut præd. est: & habeas ibi nomina illorum xij. hominum, & hoc Erre. Teste, &c.

And if the Warden will not bail him, he shall have an Alias and Pluries against the Warden, directed unto the Sheriff, to attach him to answer before the King in his Bench, and to shew wherefore he hath not replevied him, &c. And in the same Writ it shall be contained, that he call to him the Verderors, to deliver him who is so taken in the presence of the Verderors by good Bail, and that the Sheriff do deliver the names of the Bail unto the same Verderors, to answer before the Justices in the next Eyre. And no man shall be taken nor imprisoned for Vert or Venison, if he be not found in the manner, or indistat; in which case he shall be set to Bail by the Warden ex Officio, or otherwise by Writ, as is aforesaid, &c.

For hunting in the Kings Chases, or in the Chases of other men, he ought to be sued at the Common Law; and for the same a man shall not be taken and imprisoned, until he be convicted at the Common Law in an Action there brought against him. But for hunting in Parks, &c. the party shall have an Action within the year and day upon the Statute of West. 1. cap. 20. But after the year and day the King shall have Suit.

And if a man hath any Park within the bounds of any Forest, which Park is not inclosed according unto the Assise of the Forest, &c. then it shall be seised into the King's hands;

Writ de Homine replegiando.

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hands ; and then the party shall have a special Writ of Replevin, to replevy a Park out of the Kings hands : and the Writ is such,

Rex dilect. & fideli suo W. B. Custodi, &c. vel ejus locum tinenti in Foresta de S. salut'. Mandamus vobis, quod Parcum A. de B. & I. qui est infra metas Forestae nostrae praed', & qui, pro eo quod non includitur secundum Assisam Forestae, captus est, ut dicitur, in manum nostram, si secundum Assisam Forestae replegiabilis existat, eidem A. usque ad adventum justic. Placit. Foresta in Com. praedict' replegiari fac'. Teste, &c.

F In a *Homine replegiando*, the Defendant claims the Plaintiff for his Villain, and the Plaintiff pleads that he is free, and faith that the Defendant hath taken his Goods, and prays that he may gage deliverance, &c. for which the Defendant doth gage deliverance. But the Plaintiff shall not find Sureties that he shall re-deliver the Goods, &c. if he be found Villain. *Quod vi. M. 6. E. 4. 8.*

G But in a *Homine replegiando*, if the Defendant claim the Plaintiff as his Villain, the Plaintiff ought to find Sureties to deliver his Body to the Defendant if he be found his Villain. *Quod vid. P. 31 E. 3.*

A In a *Homine repleg.* the Plaintiff was bound in a Recognisance in a certain sum of money unto the Defendants use, that he would sue him *cum effectu* ; and if the Writ be abated for any cause, yet he ought to sue another Writ for that taking, &c. otherwise he shall forfeit that Recognisance, as it appeareth, *H. 8. H. 4.*

B If a man sue a *Homine repleg.* and the Defendant claim the Plaintiff for his Villain, if the Sheriff return the same upon the *Alias*, or upon the *Pluries*, in the Kings Bench or Common Pleas, where the Writ is returnable ; then upon Sureties found in Court where the Writ is returned by the Plaintiff to yield his Body, &c. he shall have a special Writ unto the Sheriff for to deliver the Plaintiff out of Prison, &c. But by the Register he shall have a special Writ unto the Sheriff to take sureties of the Plaintiff, and to sue with effect, and to yield his Body, if, &c. But the usage at this day is, that he find Sureties in Court, &c. and not to award a writ unto the Sheriff to take Sureties, *Quod vi. M. 8 H. 4. 3.*

C And in a *Homine repleg.* if the Sheriff return that the Defendant hath esloyned the Plaintiffs Body, so that he cannot deliver him ; then the Plaintiff shall have a *Capias in Withernam* to take the Defendants Body, and to keep the same *quousque*, &c. whether he be a Peer of the Realm or other common person. And if the Sheriff return *Non est inventus* in

H. 7. 3.

13 H. 7. 17.
but the better opinion is, that it is in the Judges discretion,

But 6 E. 4. 8.

& 12 E. 4. 4.
that he shall not find surety.

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Writ de Replegiare de Averiis.

this *Capias in Withernam* of the body, then the Plaintiff shall have a *Capias in Withernam* against the Defendants Goods, &c. *Quod Vide M. 11 H. 4. in title of Withernam.*

VVrit de Replegiare de Averiis.

IF a man take more live Cattel than one Beast, then the Writ is such :

Rex, &c. Præcipimus tibi quod juste & sine dilatione replegiari fac. B. Averia sua, quæ D. cepit & injuste detinet, ut dicitur ; & postea eum inde juste deduci fac, ne amplius inde clamorem audiamus pro defectu justitiæ, &c.

But if he take but one live Beast, than the Writ shall be :

Rex, &c. Præcipimus quod repl. fac. B. quendam equum suum, vel quoddam jumentum suum, &c. bovem suum, &c.

And if a man take a dead Chattel, then the Writ shall be :

Rex, &c. Præcipimus, &c. quod repl. fac. B. bona & catalla sua. And in the Count he ought to declare of divers things: But if he take but one thing which is a dead Chattel, then the Writ shall be :

Rex, &c. Præcipimus, tibi, &c. quod repleg. fac. B. quoddam rete, vel quoddam examen apium suarum, vel quoddam ferr. molend. sui And if the Sheriff doth nothing upon this Writ, then he shall have an *Alias repleg. fac, &c.* and in the same Writ he may have this Clause ; *Vel causam nobis significes, quare mand. nostrum al. tibi inde direct. exequi noluisti, vel non potuisti, &c.* And then this Writ shall be returned into the King's Bench or Common Pleas. And if he do not serve this Writ, then he shall have a *Pluries* returnable into the King's Bench or into the Common Pleas. And in the *Pluries* is always this clause ; *vel causam nobis significes* : but not in the *Alias repleg.* if not that the party will have it put in the Writ. And the Plaintiff may sue all these Writs forth together, *viz.* the *Replevin*, the *Alias* and the *Pluries*, and deliver them unto the Sheriff all at one time, if he so see good. And if the Sheriff doth not return the *Pluries*, then the Plaintiff may have an Attachment against the Sheriff, directed unto the Coroners.

And it appeareth by the Register, that if the Sheriff return upon the *Replevin*, *Sicut Alias* or *Pluries*, that he hath sent unto the Bailiff of the Franchise, &c. who hath given him no answer, or that he will not make deliverance, &c. then the Plaintiff shall have a *Non omittas* unto the Sheriff, that he enter into the Franchise and make Return; and if the Sheriff doth not do so, he shall have an *Alias non admittas* directed unto the Sheriff, and afterwards a *Pluries non omit*, &c. But

But it seemeth that that Return, *Quod mandavi Ballivo liberatis, &c. qui nullum mihi dedit responsum*, or the Return that the Bailly will not make deliverance of the Cattel, are not good Returns. For by the Statute of *West. 1. cap. 17.* in the end of the Statute it appeareth. That the Sheriff upon such a Return made unto him by his Bailiff, ought presently to enter into the Franchise, and to make deliverance of the Cattel taken : And so it appeareth the Sheriff may do by the Statute of *Marlebridge, cap. 21.* If a Plea of *Withernam* be in the County by Plaintbefore the Sheriff, and the Sheriff send unto the Bailiff of the Liberty to make deliverance, and the Bailiff doth nothing, that then the Sheriff *ex officio* may enter into the liberty without any Writ directed unto him in that case.

G And if the Sheriff upon the *Pluries* return, *quod prædict. B. Averia præd. A. cepit, & ea fugavit de Com. præd. in Com' F. per quod ea eidem A. repl. non potuit, &c.* or if the Sheriff return That he sent to the Bailiff of the Liberty of *D.* who hath return of Writs, &c. who gave him answer, that the Cattel are esloined into divers Liberties, by reason whereof he cannot have view of them, nor deliver the Cattel ; or if the Sheriff return, That he himself cannot have view of the Cattel to deliver them ; or if he return, That after the taking, &c. that the Defendant hath esloined the Cattel out of his Bailiwick that he cannot deliver them ; or if he return That the Defendant hath esloined them into unknown places, that he cannot have view of them, to deliver them ; or if the Sheriff return, That he sent unto the Bailiff of the Liberty, who answered him, that the Defendant had impounded the Cattel within the Rectory of the Church of *C.* for which cause he cannot deliver them, &c. Upon these Returns made by the Sheriff the Plaintiff shall have a Writ of *Withernam*, to take as many of the Defendants Cattel, directed unto Sheriff ; and the Writ shall be such :

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A *Rex Vic', &c. Cum plur. tibi præceperimus, quod injuste, &c. A. Averia sua qua B, &c. detinet, ut dicitur, vel causam nobis signific', quare mandatum nostrum plur. inde tibi direct. exequi noluisti, vel non potuisti ; ac tu nobis significaveris, quod postquam præd' B. Averia præd' A. cepit, in Com. tuum ea fugaverit, & de Com. præd' in Com. C. per quod ea eidem A. replegiar' non potuisti: Nos, malitia ipsius B. obviare volentes in hac parte, Tibi precipimus, quod Averia præd. B. in Balliva tua sine dilatione capias in Withern', & ea detineas, donec eidem A. Averia sua præd', secundum consuetud. regni nostri, replegiare possis, juxta tenorem mandatorum nostrorum præd' prius tibi, &c.*

And

Writ de Replegiare de Averiis.

And note that in the Writ of *Withernam*, the cause which **B** the Sheriff returned upon the *Pluries*, &c. ought to be put and rehearsed in the Writ of *Withernam*, as before is said. And if the Sheriff return upon the *Pluries*, that he hath sent unto the Bailiff of the liberty, and that he answers him that the Beasts are esloined, &c. then he shall have a *Withernam* directed unto the Sheriff, and the Sheriff shall send his Bailiff into the liberty to sue the *Withernam*; and if the Bailiff do not Execution, nor give answer unto the Sheriff of the Precept directed unto him, then the Plaintiff shall have a *Withernam* directed unto the Sheriff, with *Non omittas propter aliquam libertatem, &c. quin eam ingradiaris, &c.* and to take the Cattel in *Withernam*, &c.

And it appeareth by the Register, if a man sue a Replevin in the County without Writ, and the Bailiff return unto the Sheriff that he cannot have view of the Cattle to deliver them; then the Sheriff by enquest of Office ought for to enquire thereof: and if it be found by the Jury that the Cattle are esloined, &c. then the Sheriff in the County-Court may award a *Withernam* to take the Defendants Cattle. And if the Sheriff will not award a *Withernam*, then the Plaintiff shall have a Writ out of the Chancery directed unto the Sheriff, rehearsing the whole matter, commanding him for to award a *Withernam*, &c. And he may have an *Alias*, and after a *Pluries*, and Attachment against the Sheriff, if he will not execute the King's command. &c.

And a man shall have a Replevin of divers Cattel that are **D** taken; As if a man take divers Cows or Sheep, and afterwards they have Calves or Lambs, the Plaintiff shall have his Replevin of them all, as well as of the Cows and Sheep which were taken.

*Vide 16.H.7.
14. that a
precept to
the Bailiff
by word, is
as good as
by writing.*

And the Sheriff, upon a complaint made unto him of **E** king of the Cattle, may command his Bailiff by word for to replevy them; and the same is as well as if the Sheriff had made his Warrant to his Bailiff to have replevied them; for it may be that the Sheriff nor his Bailiff cannot write, or that they may want such things wherewith they may write a Warrant, &c.

B. 4. f. 145 And the Lord shall have a Replevin if his Villains Cattel **F** are taken; and yet he had not property in them at the time of the taking, but now by his claim he hath; &c. But it seemeth he shall not have damages for the taking of the Cattel, but only for the detaining of them, if the same be found for him.

And if a man take Cattel for Damage feasant, and the **G** ther

ther tenders amends, and he refuseth it, &c. now if he sueth a Replevin for the Cattel, he shall recover damages only for the detaining of them, and not for the taking of them, for that the same was lawful.

H And if the Lord distrain his Tenants Cattel wrongfully, and afterwards the Cattel return back unto the Tenant; yet the Tenant shall have a Replevin against the Lord for those Cattel, and shall recover damages for the wrongful distraining of them, because he cannot have an Action of Trespass against his Lord for that Distress.

I And if a man do distrain Cattel in one County, and drive the Cattel into another County, the party may sue a Replevin in which of the Counties he will, but not in both the Counties.

K And if the Cattel of a Feme sole be taken, and afterwards she marry a Husband, the Husband alone may have a Replevin: *quod vide Trin. 33 E. 3.*

L And in a Replevin, if the Plaintiff do declare, that the Defendant yet hath and detaineth the Cattel, and the Defendant doth appear, and afterwards maketh default; the Plaintiff shall have Judgment to recover all in damages, as well the value of the Cattel, as damages for the taking of them, and his costs. *M. 8. H. 8. Rot. 108.*

Writ de Pone de remover le Plee.

M Note, that if a Replevin be sued by Writ out of the Chancery, then if the Plaintiff or Defendant will remove that Pleint out of the County into the Common Pleas, or King's Bench, he ought to sue a Writ out of the Chancery, which is called a *Pone*; and the Writ shall be such:

Rex vic. Lincoln' salutem. Pone, ad Petitionem petentis, coram Justic. nostris apud Westm. tali die Loquelam qua est in Com. tuo per Breve nostrum, inter A. & B. de Averiis ipsius A. captis & injuste detentis, ut dicitur; & sum. per bonos Sum. præd. B. quod tunc sit ibi, præf. A. inde respons: & habeas ibi Sum', & hoc Breve.

And if the Writ of *Pone* shall be removed into the Kings Bench, then the Writ is such:

Rex, &c. Pone, ad Petitionem petentis, coram nobis, ubicunq; tunc fuerimus in Anglia, Loquelam, &c.

And this Writ is sued for the Plaintiff without putting any cause in the Writ of the removalment, &c.

A But if the Defendant will remove the Plea in the County upon

[70.]

upon a Replevin sued by Writ, then he ought to put an evident cause in the Writ after the Test of the Writ : and the form of the Writ is such :

Rex Vic. &c. Pune coram Justiciariis nostris apud Westm' tali die Loquel. quæ est in Com. tuo per Breve nostr. int' A. & B. de Averiiis i. si s. A. captis & injuste detentis, ut dicitur ; & dic. præf. A. quod sit ibi, Loquelam suam versus præd. B. inde prosecutus, si voluerit : & habeas ibi hoc Breve, & aliud Breve. Teste, &c. Et quia præd. B. cepit Averia præd' in feodo suo pro Consuetud' & Servic. sibi debitis, ut dicit', fiat executio istius Brevis si causa sit vera, & præd. B. petit, & aliter non. And he may shew divers other causes : Quia præd. B. & C. ceper' Averia præd. in feod. ipsius B. pro Consuetud. &c. fiat executio, &c. ut supra. Or thus : Quia A. Clericus D. Vic. Com. præd', qui frequenter in absentia Vic. Com. illius tenet Placita ejusdem Com', est Consang. præd' A. propter quod idem Vic. favet ips. A. in Loquela præd', ut dicitur, Fiat Executio, &c. ut supra.

And he may shew any cause which induceth any favour that the Sheriff doth, or is like to do unto the Plaintiff. Or thus : *Quia præd. B. clamat præd. A. esse nativum suum, & ea occasione assit Averia præd' esse sua propria, propter quod Loquela illa in Com. deduci non debeat ut dicitur, Fiat executio, &c. ut supra.*

And if a Replevin be sued by Writ in any other Lords Court than in the Kings Court, then the Plaintiff cannot be removed before the Justices by the Plaintiff, nor by the Defendant, without putting cause in the Writ ; and the Writ is ; *Pone ad Petition petentis, Loquelam quæ est in Com. tuo per Breve nostrum inter C. & Abbat. de W. & I. de quodam equo ipsius R. capt. & injuste detento ut dicitur ; & sum. per bonos Sum. præd' Abbat. & I. quod tunc sint ibi præf. R. inde resp' : & habeas ibi hoc Breve, & aliud Breve. Teste, &c. Quia præd. Abbas est Dom. Cur. in C. in qua Loquela illa pendet per retortum Brevis nostri, per quod idem R. in Loquela prædicta in eadem Curia versus præf. Abbatem & I. justitiam consequi non potest, ut dicitur, fiat executio, &c. ut supra.*

And if the plea be removed at the suit of the Plaintiff, then when he hath shewed cause in the end of the Writ, he shall say afterwards in the same Writ, *Propt. quod idem Querens in Loquela sua præd' versus præfat' B. in eadem Curia justitiam consequi non potest, ut dicitur.*

And if the Plea be removed at the suit of the Defendant, then after cause shewed in the Writ, it shall be said, *propter quod idem Hallivus favet ips. A. in Loquela sua præd', ut dicitur, Fiat executio, &c. ut supra.*

Writ

Writ de Recordare.

When the Plaintiff is in the County, and the Replevin It appeareth
 sued there without Writ ; then if the Plaintiff or by the Re-
 Defendant will remove that Plaintiff, he ought to sue a writ of ^{gister, 6 &}
 Recordare out of the Chancery directed unto the Sheriff ; ^{7 Br. Cause}
 and the Writ shall be such : ^{de remover}

Rex Vic. Linc. salut. Præcipim' tibi, quod in pleno Com. tuo re- ^{Plea 36. that}
cordar' fac' Loquel' quæ est in eodem Com. sine Breui nostro inter Pleas shall ^{by Recordare}
A. & B. de Averis ipsius A. captis & injuste detentis, ut dic. ^{be removed}
& Record. illud habeas coram Iusticiarijs nostr. apud Westm. ^{extra Dur-}
tali die, &c. sub sigillo tuo, & sub sigillis quatuor legal. Milit. ^{ham & Ce-}
eiusdem Com. ex illis qui Recordar. illi interfuer' ; & partibus eun- ^{striam : yet}
dem diem præfigas, quod tunc sint ibi, in Loquela illa prout justum ^{these are}
fuerit processurum : & habeas ibi nomina prædictor. quatuor Mili- ^{Courts of}
tum, & hoc Breve. Teste, &c. Fiat executio istius Brevis, si præd' ^{Record.}
A. hoc petat, & aliter non.

And thereby it appeareth, that the Plaintiff may remove ^{27 H. 6. B.}
 the Plaintiff by Recordare without any cause put in the Writ ; ^{Quare.}
 But the Defendant cannot remove the Plaintiff by a Recordare,
 without shewing cause in the Writ, as before is said upon
 the Pone. And the Causes for the Defendant ought to be such ;
Quia præd' B. in placitando asserit se Averia præd' cepisse in se-
perali solo suo, ut in dampn' suo ibid', in quo quidem solo præd' A.
clam. habere Commun' Pastur', ut dic' ; quæ quidem Loquela, eo
quod tangit liber. Tenement. (ut prædict' est) in eodem Comitatu,
secund' Legem & consuetud' regni nostri sine Breui nostro placita-
ri non debet ; Fiat executio istius Brevis, si causa sit vera, & præd.
A. hoc petat.

And if a Replevy be sued in by Plaintiff the Court of
 any other Lord than in the County-Court before the She-
 riff, then the Recordare which is sued by the Plaintiff or De-
 fendant shall be directed unto the Sheriff, and the Writ
 shall be such :

Rex Vic. Linc. salut', Præcipim' tibi, quod assumptis tecum
quatuor discretis & legalibus Militibus de Com. tuo, in propria per-
sona tua accedas ad Curiam W. de C. & in illa plena Curia re-
cordari facias Loquelam quæ est in eadem Curia sine Breui nostr'
inter, &c. & Record' illud habeas sub sigillo tuo & sigill. quatu-
or legal' hominum eiusdem Cur' qui Recordar' illi interfuer' ; &
partibus, &c. ut supra. Quia præd. A. est Ballivus præd. W. de
C. Curie sue præd', & tenet Placita eiusdem Cur. & Iudex in
sua causa esse non debet.

Another

[*71]

9 H. 6. 38.
If a Record-
re issue to
a Court of
Record to
remove a
Plea, al-
though by
that the Re-
cord by re-
moved, it is
void, if it be
not to re-
move In-
dictments.
3 H. 6. 30.
Br. Cause de
de remover
Plea 37.
2 H. 8. 5. But
if Conusans
be deman-
ded, all the
Record in
bank shall
be in the
Franchise.
9 H. 6. 58.
Oyer and
Terminer
shall not be
removed by
Recordare
by Babing-
ton, 1 R. 3.
4. ac. Vid.
5 E. 6. fo-
91. 34 H. 6.
27. Aſton
cont. upon a
Fine remo-
ved; and
22 H. 6. 7.

Another *Recordare* thus; *Accedas ad Wapentag. nostr. de H*; or thus, *ad Hundr. nostr. de I*. or thus, *ad Tithingum nostrum de L*; or *in pleno Wapentag. illo*; or thus, *in pleno Hundr. illo*; or thus *in pleno Tithingo illo*, &c. And he may shew other causes as the Case requireth. And if the *Recordare* be returnable in the Common Pleas, and at the day of the return the Sheriff return it * *tarde*; now the party that sued that *Recordare* shall have a *Sicut alias Recordare* out of the Common Pleas, directed unto the Sheriff, &c.

And if the Plea be discontinued in the County, yet the Plaintiff or Defendant may remove the Plaintiff into the Common Pleas or King's Bench by *Recordare*, &c. and it shall be good, and he shall declare upon the same; and the Court shall hold Plea upon the same Plaintiff; for if the Plaintiff be continued in the County, and issue joyned upon it, yet nothing shall be removed but only the Plaintiff; and in the common Pleas the Plaintiff may declare anew, &c.

And in a *Recordare* to remove a Record out of Ancient B Demesn, the Writ shall say, *Loquelam & processum*, and not *Recordum*; *quod vid.* 39 H. 6. by all the Justices; yet the form of the Register in the Record, as before is said; is, *Et Recordum illud habeas*.

If a Record be removed out of a Court of Record by a C *Recordare facias*, it cometh in without Warranty, and the Court shall not hold Plea thereof. But if a Record cometh in Court without a Warrant, the Party may sue a Writ, directed unto the Justices, that they proceed upon that Record *quod coram vobis residet*. If the *Recordare facias* bare date be D fore the Plaintiff were entred in the County, yet the Record is well removed, because that both Courts are Courts of Record. But if the Record be removed out of the Court of any other Lord by such Writ which beareth date before the entry of the Plaintiff, it is not good.

Recaption

A Writ of Recaption lieth where a man distraineth for E Rent, or Service, or other things, and afterwards, pendant the Plea, he who distrained doth distrain again for the same Rent or Service, or other thing, the Beasts of the party whom he had before distrained upon; then he who is so distrained shall have this Writ, and shall recover damages for the second Distress taken; and he who took the Distress shall be fined for the wrong, although the first Distress were lawfully taken, and although that the Rent or Services for which

which he distraineth were arrear, &c. because by the first Distress he shall have return of the things taken, untill he hath the Rent or Services for which he distrained. But for damage feasant in his Lands a man may distrain the Beasts of any man which he finds upon the Land, during the damage, so often as he shall find them so doing, because he distraineth them every time for a new Trepass, and new wrong done in his Land. *Tamen quere.*

F And if the Lord distrain for Rent or Services behind, and afterwards pendant the Plea, the Lord doth command his Servant to distrain for the same Rent or Service, by reason whereof the Servant or Bailiff do distrain again; the Tenant shall have a Writ of Recaption against the Lord for the same Distress.

And so it seemeth, if the Lord distrain his Tenant for Rent or Service, and afterwards the Servant or Bailiff do distrain the Tenant again for the same Rent or Service, and the Lord do agree unto that Distress, by joyning in Aid preyer of the Servant or Bailiff, the Tenant shall have a Writ of Recaption against the Lord. But if the Lord distrain for Rent or Service, and afterwards the Lords Bailiff doth distrain the same Tenant for the same Rent or Service, pending the Plea; the Tenant shall not have a Recaption against the Lord, nor against the Bailiff, although the Bailiff maketh conusance in the right of the Lord, &c. For it may be that the Lord had not notice of that Distress, or that the Bailiff had not notice of that Distress which the Lord took before for the same Rent or Service.

G But it seemeth in that case the Tenant may have an Action of Trespas against the Bailiff for the second Distress of his Cattel for the same Rent or Service, for which the Lord had distrained before.

H But if the Lord do distrain for Rent or Services, and afterwards (pendant the Plea) the Lord do distrain the Cattel of a stranger for the same Rent, and not his Cattle who was first distrained; he who is so distrained shall not have a Writ of Recaption, nor he who was first distrained. For it behoveth him who shall have this Writ of Recaption, that he have his Cattel first distrained before for the same cause for which they were distrained the second time.

I But if a man distrain two mens Cattel for Rent or Service, and afterwards he doth distrain the Cattel of one of them again for the same Rent or Service; now he shall have a Recaption alone in his own name.

K And if the Lord distrain the Beasts of a stranger for Rent
or

or Service, and afterwards (pendant the Plea) the Lord doth distrain the Beasts of the same stranger for the same Rent or Service; the stranger shall have a recaption as well as the Tenant, if the Beasts were taken at two several times.

And if the Writ of Replevin be abated, then the Writ of Recaption shall abate, as it was judged in the time of K.E.1.

And if the Lord do distrain for Rent arrear at a certain day his Tenants Cattel, and he sueth a Replevin, &c. and the Lord avow for the Rent, &c. and the Tenant plead *hors de son Fee*; if the Lord (pendant that Plea) distrain for Rent behind at another day after, the Tenant shall have a Writ of Recaption, because the Lords Title shall be tried by the first Plea. But otherwise it is, if the Tenant in the first Replevy plead *Riens arreare*, or levied by Distress, then (pendant that Plea) the Lord may distrain for the Rent behind at a day after, because that the Seigniority is there confessed, and the Tenant shall not have a Recaption.

[72.]

47 E. 3. 7.

And the Tenant or he who is distrained, shall have a Recaption before any Avowry made, and may aver he is distrained for the same cause

47 E. 3. 7.
9 H. 6. 4.

And in a Recaption the Defendant shall not avow, as he shall do in a Replevin, but shall justify the taking, &c. as he shall do in an Action of Trespas, for the Plaintiff shall recover damages only in the Recaption for the Contempt that the Defendant hath done against the Law, and not for the taking of the Cattel, nor for the detaining of them. And in a Recaption it is not material whether the first Distress be of right or not.

And if a Plaint be removed out of the County into the Common Pleas by *Pone* or *Recordare*, and afterwards the Plaint be Non-suit in the Common Pleas, before or after an Avowry made, the Lord after this Non-suit may distrain again for the same cause, and the Tenant shall not have a recaption, because there is not any Plea depending; and yet the Plaintiff may sue a writ of Second Deliverance upon the same Record.

And if the Lord distrain the Cattel of the Tenant and a stranger, which they have in Common, for Rent or Service, and afterwards (pendant the Plea) the Lord doth distrain the Tenants Cattel only for the same cause; the Tenant shall have a Recaption for those Cattel. But if the Lord distrain the Cattel of the Tenant only for Rent, &c. and afterwards (pendant the Plea) the Lord doth distrain the Cattel of the Tenant and a stranger, which they hold in common, for the same cause; it seemeth that the Tenant shall not have Recaption for those Cattel for the interest of the stranger. *Quare.*

And

And if the Lord distrain, and the Tenant sue a Replevin, which is removed into the Common Pleas, and the Conuſance is demanded by the Bailly of the Freehold, and is granted, and afterwards the Bailly fail to do right unto the party; if he distrain again for the ſame cauſe, the Tenant ſhall have a Recaption, becauſe the Lord ought to remove the Plea into the Common Pleas again by Reſummons, &c.

And a Recaption lieth where the Lord diſtraineth other Cattel of the Tenant than he firſt diſtrained, as well as if he had diſtrained the ſame Cattel again, if it be for one and the ſame cauſe, as I conceive. And yet in 19 E. 3. the Iſſue was taken upon the Property of the Cattel, as that they were other Cattel of the Plaintiff, &c.

And a Recaption lieth as well where the Lord diſtraineth the Tenant again for the ſame cauſe, where the Plea is depending in the County before the Sheriff, as where the Plea is depending before Juſtices of Record.

And if the Plea be depending in the County before the Sheriff, then the form of the Writ of Recaption is :

Rex Vic', &c. Monſtravit nobis A. quod quum tu Averia ſua, quæ B. cepit et injuſte detinuit, eid. A. ſine Breui noſtro replegiaſſes, & dediſſes diem uſq; ad prox. Com. tuum, et præd. B. attachiaſſes, ad reſpond. ſuper præf. A. idem B. poſt Attachiamen. illud Averia præd. A. iterum cepit ea occasione qua prius ea ceperat, et ea ſicut prius detinet. Et quia hoc injuſtum eſt & manifeſte contra pacem noſtram, Tibi præcipimus, quod Averia præd. A. ſine dilatione deliberari fac', quouſque capitale Placitum inter eos terminet'. Et ſi invener. quod præd. B. Averia præd. A. iterum ceperit ea occasione qua prius ea ceperat, et ea ſicut prius detinet, tunc corpus præf. B. habeas coram te & euſtodibus Placitorum Coronæ Noſtræ ad proximum Com. tuum. Et ſi per Ballivos tuos, per quos Averia præd. A. replegiat. fuerint, & per alios probos & legal. homines de Com. tuo, convinci poter. de ſecund. caption. pro una & ead. occasione, tunc ipſum B. ita per miſericordiam caſtigas, quod caſtigat. illa in caſu conſimili timor. aliis præbeat delinquendi.

And if the Plaint be in the County by Writ of Replevin pending before the Sheriff, then the Writ is ſuch :

Rex. Vic. S. ſalu', Monſtravi nobis A. quod cum. ipſe Breve noſtrum nuper tibi detuliſſet de Averiiſ ſuis ſibi repl', quæ B. cepit & injuſte detinet, & Averia illa eid. A. repleg', & eidem dediſſes diem uſq; ad prox. Com. tuum, &c. as in the Writ before. And if the Plaint be removed out of the County by Recordare, then the form of the Writ of Recaption ſhall be ſuch :

Q

Rex

Rex Vic', &c. Monstravit nobis A. quod cum B. Averia præd. A. cepisset & injuste detinueret, & tu ad querimoniam ipsius A. prout mos est Averia illa eid' A. replegiasses, & ei dedisses diem usq; ad prox' Com. tuum, & præd. B. attachiasses ad respond' super hoc præf' A. & postmod tibi preceperimus, quod haberes Recor. Loquela præd' coram Justic' nostris apud Westm. tali die prox. præterito; idem B. pendente Placito coram præf. Justic' Averia præd. A. iterum cepit &c. ut supra.

And if the plâint be removed out of the County by aPone into the Common Pleas, then the Writ of Recaption is such:

Rex Vic. &c. Monstravit nobis A. quod cum ipse Breve nostr. nuper tibi detulisset de Averis suis sibi repleg', quæ B. cepit & injuste detinuit, & Averia illa eid' A. repl', & ei dedisses diem usq; ad prox' Com. tuum, & præd. B. attach. ad respond. super hoc præf. A. & postmod preceperimus Loquel. illam poni coram Justic' nostris apud Westm. tali die prox. præterit'; idem B. pendente Placito præd' coram iisd' Justic', Averia præd' A. iterum cepit eâ occasione quæ prius ea ceperat, & ea sicut prius deten. & in contempt. Precept. nostrorum Justiciar' non permittit. Et quia hoc injustum est, & manifeste contra pacem nostr. Tibi præcip. quod si præd. A. fecerit te secur. de clam. suo prosequend', &c. tunc pone per vad, &c. præd. B. quod sit coram Justic' nostris præd', ad respond. nobis de contemptu præd', & præd. A. de transgr. præd. & habeas ibi nomina Pleg' & hoc Breve; & Averia illa eid. A. repleg. facias. Teste, &c.

[73.]

If a man sue a Replevin by Writ, and the Sheriff send A unto the Bailiff of the Liberty to replevy the Cattel, because that the taking was within the Liberty, and afterwards the Plaint is removed by Pone into the Common Pleas, and afterwards the Lord, or the party who distrained before distrain again for the same cause; then he who is so distrained shall have a Writ of Recaption, and the Writ shall be such:

Rex Vic. &c. Monstravit nobis S. quod cum ipse Breve nostrum nuper tibi detulisset, de quodam equo suo sibi repl', quem I. & A. ceperunt, & injuste detinuerunt, ac Ballivi Libertat. Abbat. de R. de C. quibus Retorn. Brevis nostri præd. haberi fecisti, equum illum eidem S. replegiassent, & præd. A. & I. attachiassent, ad respondend. super hoc præf. S. & postmod. preceperimus Loquel. illam poni coram Justic' nostris apud Westm. tali die, anno regni nostri tertio; præfati I. & A. pendente placito prædicto coram Ballivis prædicti Abbat. Curie suæ præd. coram quibus Loquela illa, juxta libertates eidem Abbati concessas, per eosd. Justic. retornata est placitand. Averia præd. S. iterum ceperunt, &c. ut supra.

And

E And if a Lord hath a Hundred or a Wapentake, and hath power to hold Plea *de vetito Namio*, &c. and a man distraineth another there, for which he sueth a Replevin within the Hundred, and pendant the Plea there, the party who distrained before distrained the same man again for the same cause; then he who is so distrained shall have a Writ of Recaption in such form directed unto the Sheriff.

Rex Vic', &c. Monstravit nobis A. quod cum B. Averia præd. A. cepisset, & injuste detinisset, ac Fallivi M. de N. ad querimoniam ipsius A. (prout moris est) Averia illa eidem A. Replegiassent, ac ei dedissent diem usque ad proxim. Wapentag. prædict. Domini sui de N. & præd. B. attachiassent ad respondend. super hoc præf. A. postmodumque tibi præceperimus, quod assumptis tecum, &c. accederes ad præd. Wapentag', & in pleno Wapentagio, &c. sine Brevis nostro, inter ipsum A. & præf. B. de prædict. Averiiis ipsius A. capis, &c. & Record. illud, &c. idem B. pendente Placito, &c. ea occasione quâ prius, &c. as before in the Writ of Recaption.

C And now it appeareth by these Writs of Recaption, that if a man be distrained, and he sue a Replevin by Plaint before the Sheriff in the County, and afterwards hanging that Plaint, he is distrained again for the same cause, that he shall have a Writ of Recaption, which shall be directed to the Sheriff and the Sheriff shall hold Plea upon that Writ of Recaption.

But if a man be distrained within any Liberty, and he sue a Replevin there by Plaint, or by Writ, and pendant that Plaint in the Liberty he be distrained again for the same cause, by the person who distrained before; he shall not have upon that Distress a Writ of Recaption, because the Plaint is not pendent before the Sheriff, nor before the Justices, and the King will not direct the Writ of Recaption but unto the Sheriff. But if the Plaint were removed by *Pone* or *Recordare* out of the Liberty before the Justices, then the party who was distrained shall have Recaption, as well for the Distress which was before the Writ of *Pone* or *Recordare*, as if the re-taking had been after the *Pone* or *Recordare* sued forth.

D And if a man be Convicted before the Sheriff in a Writ of Recaption, &c. he shall be amerced, and render damages unto the party for the contempt. But if he be convicted before the Justices in a Writ of Recaption, he shall be fined, and not amerced, and also shall render damages unto the party for the contempt.

Writ de Withernam.

THIS Writ lieth where a man taketh the Cattel or Goods of another man, and the party sueth a Replevin by Writ, and an *Alias* and *Pluries*, and upon the *Pluries* the Sheriff doth return, that the Cattle or Goods, &c. are esloined, &c. by reason whereof he could not replevy them, &c. then this Writ of Withernam shall issue out of that Court where the *Pluries* is returned, returnable in the Kings Bench or Common Pleas : and the form of the Writ is such :

Rex Vic. Linc. sal. Quum pluries tibi præceperimus quod ju-
ste, &c. A. Averia sua quæ B. &c. vel causam, &c. quare manda-
tum nostrum pluries tibi inde directam exequi noluisti, vel non
potuisti; ac tu nobis significaveris, quod postquam præd. B. Averia
præd. A. cepit, & in Com. tuo ea fugavit de Com. præd. in Com.
B. per quod ea eidem A. replegiar. non potuisti : Nos, malitia ipsi-
us B. obviare volentes in hac parte, tibi præcipimus, quod Averia
præd. B. in Ballivâ tua cap. in Withernam. et ea detineas, do-
necc eid. A. Averia sua præd. secundum Legem & consuetudinem
Regni nostri repl. possis, juxta tenorem mandator. nostror præd. pri-
us tibi, &c.

And in the Writ of Withernam he ought to rehearse the Cause which the Sheriff returneth for which he cannot replevy them : as to say,

Ac postquam præd. B. Catalla vel Averia illa cepit, Catall
vel Averia illa, aut Bov. vel Equum illum elongavit extra Bal-
livam tuam, ita quod nullam deliberation. inde eid. A. facere po-
tuisti, sicut nobis significasti ; Nos, &c. tibi præcipimus, quod Ca-
tall. vel Averia, &c. as the Case is in Ballivâ tuâ ad va-
lentiam Catall, &c. præd. A. sine dilatione cap. in Withernam,
& ea detineas, donec eidem A. &c.

[47.] And there are very many causes that the Sheriff may return upon the *Pluries*, wherefore he cannot replevy them, whereof divers of them do appear in the Register, which a man may there see.

And if the Sheriff do return upon the *Pluries repleg.* that he hath sent unto the Bailiff of the Liberty who hath return of Writs, &c. and that the Bailiff hath given answer, that he cannot execute the Writ, because he cannot have a view of the Cattel or Goods which were taken ; then the Court in which such Return is made shall award a Writ of Withernam directed unto the Sheriff, and the Sheriff shall thereupon make his Precept unto the Bailiff of the Liberty ; and if the Bailiff of the Liberty doth not make a return thereof unto

the Sheriff, then the Sheriff shall return the whole matter in Court, and thereupon the Court shall award a Writ of Withernam, and a *Non omittas* with the same: and the form of the Writ shall be such:

Rex Vic. B. salut. Cum plur' &c. [usque ibi, vel non potuisti] ac R. de C. Ball' Libertatis S. Walrici, cui Retorn. Brevis nostri haber' fecisti, tibi responderit, quod Executionem Brevis illius facere non potuit, eo quod visum Averiorum præd' habere non potuit, sicut tu nobis significasti; per quod tibi præceperimus, quod Averia præd' B. in Ball. tua sine dilat. caperes in Withern' & ea detineres, donec eidem A. Averia sua, &c. inde direct', vel causam nobis signif', &c. vel tu non potuisti; ac tu nobis retornaveris, quod idem R. Ball. Libertatis præd', cui Retorn', &c. haber' fecisti, null' tibi inde dedit respons'. Tibi præcipimus, quod non omittas propt. Libertatem præd', quin eam ingrediar', &c. c. p. in Withern' donec, &c. juxta, &c. prius tibi, &c. Teste, &c.

B And if a man distrain any mans Cattel, and he sue a Replevin by plaint made unto the Sheriff, for which the Sheriff makes a Precept unto the Bailiff to replevy them, and the Bailiff return at the next County, that he cannot replevy the Cattel, because they are esloyned, or that he cannot have view of the Cattel; then the Sheriff in the same County Court ought to make enquiry if it be true which is returned, and if it be found so by the Jury, then the Sheriff *ex Officio* shall make a Precept unto his Bailiffs in the nature of a Withernam, to take as many Cattel of the other party: and if the Sheriff make such precept to take the others Cattel in Withernam, and the Bailiff will not execute the Writ, then the party may have a Special Writ out of the Chancery, directed unto the Sheriff, commanding him to do Withernam, and to do execution of the first Judgment: and the Writ shall be such:

Rex Vic', &c. Monstr. nobis A. quod cum B. & C. Averia præd' A. cepis et injuste detinuisti. idemque A. coram te prosecutus fuisset pro Averia præd' sibi secund. Legem & consuetud. regni nostri replegtand'. ac licet per I. Ball. tuum, quem ad Averia præd. de dict. A. repleg. misisti, testatum fuerit, & per inquisitionem (prout moris est,) in plen' Com' tuo fact. compertum, quod idem Ball. visum de eisd. Averia habere non potuit, ad eadem præf. A. replegtand', per quod in pleno Com. tuo consideratum fuit, quod Averia præd' B. et C. in Balliva tua caperentur in Withernam, & detinerentur, quousq; eidem A. Averia sua præd. secund' Legem & consuetud. Regni nostri replegiar' possint; idem tamen A. Execution', emendationis præd. nondum affectus est, ad damn' ipsius A. non

modicum & gravamen; et quia pref. A. subvenire volumus in hac parte, tibi precipimus, quod si ita sit, Averia præd' B. & C. cap. in Withernam, & ea detineas quousque eidem A. Averia sua præd' repl. possis secundum Legem & consuetud. regni nostri, et juxta considerationem præd', &c.

And by that it appeareth, that the Sheriff may award C Withernam, or Replevin sued by plaint, if it be found by enquest in the County that the Cattel are esloined according to the Bailies return, &c. But upon the Withernam awarded in the County, if the Bailly do return that the other party hath not any thing, &c. he shall have an *Alias* and a *Pluries*, and so infinite, and hath no other remedy there.

But upon a Withernam returned in the Kings Bench or D Common Pleas, if the Sheriff do return that the party hath not any thing, &c. there a *Capias* shall be awarded against him, and Exigent, and process of Utlagary.

In a Replevin sued by Writ, at the *Pluries* returnable the Sheriff doth return, *quod averia elongata sunt*, &c. Now if the Defendant appear, the Plaintiff shall not have a Withernam, because the Defendant may gage deliverance. And if the Defendants Cattel be taken in Withernam, they shall not be delivered to the Plaintiff, but the Sheriff shall keep them *quousq*; &c. and the same appeareth by the words of the Writ: but it is said, that it is the usage in the Kings Bench, that they shall be delivered unto the Plaintiff; by which it seemeth, that the form of the Writ of Withernam there is in another manner than it is in the Register.

Note the
last case
13 H. 7. the
Defendant
at the Ez-
igent after
the Vither-
nam.

In a Replevin, at the *Pluries* returnable the Sheriff doth E return, *quod Averia elongata sunt*, &c. and the Defendant doth appear, and pleadeth that he did not distrain them: now the Plaintiff shall not have Withernam. And so if the Defendant at the *Pluries* returned appear, and plead that the Cattel are dead in the default of the Plaintiff, the Plaintiff shall not have Withernam.

And the Defendant in some cases shall have a Withernam against the Plaintiff: as if the Defendant hath a Return awarded for him, and he sueth a Writ *de Retorno habendo*, and the Sheriff return upon the *Pluries*, *quod Averia elongata sunt*, &c. he shall have a *Scire facias* against the Pledges, &c. according unto the Statute of *West. 2.* and if they have nothing, then he shall have Withernam against the Plaintiff of the Plaintiffs Cattel. *Quod vide Tr. 7. R. 2.*

Moderata Misericordia.

THE Writ of *Moderata Misericordia* lyeth in case where
 A a man is amerced in a Court-Baron, or other Court [75.]
 which is not a Court of Record, outrageously for Trespas 14 H. 4. 4.
 or other offence; then he may sue this Writ directed unto
 the Lord of the Court or unto his Bailies, commanding
 them, that they moderately amerce the party according un-
 to the quantity of the Trespas, &c. And this Writ is found-
 ed upon the Statute of *Magna Charta* cap. 14. *Quod nullus*
liber homo amercietur nisi secundum quantitatem delicti, &c. And
 the Proceſs upon this Writ is *Alias* and *Pluries*, and Attach-
 ment, and the Attachment shall be awarded against him a-
 gainst whom the original Writ was sued; and the form of
 the Writ is such:

Rex Ball' I. de S. salutem. Monstravit nobis C. quod cum ipse
 B nuper amercietus esset in Cur. præd. domini vestr. de I. pro modico
 delicto, in quod incidit, vos ab eo gravem exigitis redemptionem,
 contra tenorem *Magnæ Chartæ de Libertatibus Angliæ*, in qua
 continetur, *Quod nullus liber homo amercietur nisi secundum quanti-*
tatem delicti, & hoc salvo Contentemento suo, & Villanis salvo
Wainagio: Et ideo vobis præcipimus quod a præf. C. moderatam
 capiatis *Misericordiam*, secundum quantitatem delicti illius, ne clamor
 ad nos veniat inde iteratus. Teste, &c.

And the Attachment shall be always directed unto the
 Sheriff, and the writ shall be such:

Rex Vic', &c. Si A. fecerit, &c. tunc sum. B. & C. Ball. D. de I.
 quod sint coram iustic. nostris apud Westm', &c. ostens. quare, cum
 idem A. nuper amercandus esset in Hundred vel Cur. dicti dom.
 sui de I. pro modico delicto, in quod incidit; & nos ad requisition.
 ipsius A. præf. Ball. præceperimus, quod juxta tenor' *Magnæ Char-*
tæ de Libertatibus Ang. moderatam ab eo caperent *Misericordiam*,
 secundum quantitatem & modum delicti illius; iidem Ballivi, spre-
 tis mandatis nostr. præd', præf. A. graviores inde redemption.
 per varias distractiones torquere non cessarunt, in nostri contempt',
 & ipsius A. grave dampnum, & contra tenorem *Chartæ præd'*
 ut dicitur. Et habeas ibi Sum', &c. Teste, &c.

And if a man be amerced in a Court Baron, where he did
 C not any Trespas, but it is so presented by the Enquest, &c.
 yet it seemeth he shall not have this writ, if the Amerce-
 ment be not outrageous: but if the Steward of his own head
 will amerce any Tenant or other party without cause, I con-
 ceive the party shall have an Action of Trespas, if he be dis-
 strained for that Amercement, and the party ought not for to
 sue his writ of *Moderata Misericordia*. Q 4 K

Moderata Misericordia.

If a Feme covert be amerced for Trespafs, &c. if the Husband be distrained for the same, he shall have this Writ, if the Amercement be outrageous.

But what shall be said a moderate Amercement, and what not, appeareth by the words of the said Statute, which saith *Secundum quantitatem delicti*. By which it seemeth that if it exceed the value of the Trespafs, it is not a moderate Amercement; and that shall be intended for the value of the Trespafs which is done unto the Lord, and to him who shall have the Amercement: for if one Tenant do Trespafs unto another Tenant, he shall be therefore amerced in the Lords Court by presentment of the Trespafs; but that Amercement shall not be unto the value of the damages which is done unto the Tenant, but having regard unto the wrong and offence done unto the Lord for the wrongs done unto his Tenant.

And if a man be Non-suit in a Court-Baron, he shall be amerced, and if it be outrageous, he shall have this Writ of *Moderata misericordia*: and so shall the Defendant if he be amerced in any Suit brought against him, because it is found against him; or that he makes default to wage his Law at the day given him in any Plaint sued against him, &c. And if the Amercement be not moderate, he shall have this Writ of *Moderata misericordia*, &c.

In a Court-Baron if two be amerced for one Trespafs outrageously, they shall not joyn in a *Moderata misericordia*, for they shall be severally amerced, although the Trespafs be joyntly done. And so is it in a Plaint sued by two, if they be Non-suit, the Amercements shall be several, and they shall not joyn in *Moderata misericordia*; yet if an Amercement be set joyntly upon them, then they shall joyn in the Writ. But it seemeth this Amercement ought to be affected by persons certain, when they are amerced for any Trespafs. And if the Amercement which is set be affected by his Peers, then this Writ of *Moderata misericordia* doth not lie; for then it is according unto the Statute of Mag. Chart', *quod vid 10. E. 2.* in Title of Actions upon the Statute in the Abridgment.

And it is called *Misericordia*, in English Mercy, for the smallness thereof, by which it seemeth it ought to be less than the offence: and then it seemeth they shall be severally amerced for a joynt offence, because one shall not be charged for the offence of another; but they shall equally bear the charge, and pay the sum assessed.

And in the common Pleas, the course is, when there are divers Defendants, to make several Estreats of the Amercements,

ments, and to deliver them unto the Clerk of the Assise, and he shall deliver them unto the Coroners, and they use to *assere* the Amercements severally.

K And if divers Demandants be amerced in a real Action for their Non-suit, they make the Estreats severally upon them, and deliver them as before unto the Clerk of the Assise, who delivereth them over unto the Coroners to *assere* the Amercements.

But in a personal Action in the Common Pleas, where there are many Plaintiffs named, and they amerced, the Clerk hath forgotten, and cannot shew how the usage hath been to make the Estreats against them; but it seemeth with reason, that all shall be done in one manner. For it cannot properly be said that a man hath mercy shewed and offered unto him if he shall pay, or shall be put to more Charge for the offence of another person, which himself hath not done: For the nature of the word (Mercy) is, that man shall not be punished so much as he hath deserved. By which it appeareth, that every Amercement shall be or ought to be severally assessed upon every own for his his own offence, and that to a lesser sum than he deserveth to pay. *Quere* the usage and manner thereof in the Common Pleas, and look the Statute of *West. 1 cap. 18.* by the equity of which Statute the usage is accrued, and doth continue in the Common Pleas and King's Bench, and before the Justices of Assise; and the Clerk of the Warrants in the Common Pleas doth make the Estreats, and doth deliver them unto the Clerks of the Assise, to deliver them unto the Coroners to *assere* the Amercements, and the Coroners do assess the Amercements, and deliver them unto the Clerks of the Assises, and they deliver them back unto the Clerk of the Warrants, who maketh the Estreats: and then one of the Justices of the Common Pleas, or the Clerk of the Warrants, goeth with the Rolls of the Estreats into the Exchequer, and there puts them before the Barons of the Exchequer. And the form of the Estreat is such:

[76.]

A Staff. *De Henr. Hart & Will. Maner, quia non habuerunt Johannem Brok nuper de B. in Com. præd. Yeom', quoniam manuceperunt, &c. De Johanne N. pro se et Pleg. suis, quia non est prosecutus Breve suum versus N. H. de K. in Com. præd. Husbandman in Placito Debiti. &c. De Stephano White, pro falso clam. suo versus D. de, &c. in Placito Detentionis, &c.* And so the Estreat doth rehearse the cause for which he was amerced, &c. For the Justices do not assess any sum for any Amercement upon any person, but make their Entry as abovesaid; and then the

the Coroners do set the sum upon the heads of every of them ; as upon every one of them 4 s. or 6 s. as they shall think fit in their discretions, viz. severally upon every of them.

And by the Statute of *Magna Charta*, cap. 14. no Spiritual person shall be amerced according to his Spiritual Benefice, but according unto his Lay-fee, and according unto the quantity of the Trespass; and if he be otherwise amerced, he shall have a Writ upon the said Statute against the Sheriff, or him who amerced him. And the Writ shall be such.

Rex Vic', &c. Quum in Magna Charta de libertat. Angl. continetur, Quod nulla Ecclesiastica person. amerc. secundum quantitatem Benefic. sui Ecclesiastici, sed secundum Laicum Feod. suum; ac jam ex querela S. Person', &c. accepimus, quod licet ipse nullum Laicum Feod. teneat, tu tamen ipsum S. in Turno tuo, in Hundredo tali, super aliquibus coram te in eodem Turn. presentat', ipso S. super his non summonito, nec legitime conviſto, pro voluntate tua graviter amerciasti, et Amerciamentum illud de bonis suis Ecclesiasticis levare intendis minus juste, in ipsius S. dampnum non modicum, et contra tenor. Chartæ prædictæ: Nos volentes ipsum S. in hac parte prægravari, tibi præcipimus, quod si ita est, tunc ipsum S. coram te taliter amerciar', seu Amerciament. aliquod de bonis suis Ecclesiasticis levare non fac', contr. tenorem Chartæ supradictæ; et Distinction', si quam, &c. Teste, &c.

And upon this he may sue an *Al'* and *Pl'*, and *Attach. un-* less the Sheriff do according to the Writ directed unto him.

And it seemeth that the party may sue a Writ upon the Statute by a *Pone*, &c. if he will, against the Sheriff or the other who amerced him, because that the Statute is a Prohibition in it self, and need not sue such a Writ as aforesaid. And by the Statute of *Magna Charta* every Amercement in a Court-Baron ought to be assayed by two Tenants of the Mannor upon Oath. And if the Steward or Bailly will assels any Amercement without Asserement, then he who is amerced shall have such Writ:

Rex Ballivis Episc. W. de S. Salut'. Quum in Magna Charta de Libertatib. Angl. contineatur, Quod nullus liber homo amercietur pro parvo delicto nisi secundum modum ipsius delicti, & pro magno delicto secund. magnitudinem delicti, salvo Contenemento suo, & Mercator eodem modo salva Merchandisa sua, & Villanus alterius quam nostri eodem modo amerciet', salvo Wainagio suo, si incider' in manum nostram, et nulla Misericordiar. præd. ponat. nisi per sacrament. proborum et legalium hominum de visu', prout in eadem Charta plenius continetur; ac jam ex querela hominum & Tenentium Manerii præd. acceperimus, quod

quod vos ipsos homines & Tenentes. cum in Cur. ejusdem Manerii in Misericordiam inciderint pro aliquo debito. ad magnas pecuniar. summas voluntarie assidentis, non permittentes quod misericordia illa per sacrament. hominum & Tenentium ejusdem Manerii ponatur, in ipsorum homin. & Tenentium dampnum non modicum, & Contra tenorem Chartæ præd. : Nos, volentes Chartam ill. in omnibus & singulis suis articulis inviolabiliter observari, vobis præciimus, quod ab hujusmodi summis super homin. & Tenent. præd. quum in misericordia inciderint voluntarie assident. penitus desistentes, Misericordiam hujusmodi per sacramentum proborum & legalium hominum ejusdem Cur. poni per emittatis, juxta tenorem Chartæ præd. Teste, &c.

And he may sue an *Alias* and a *Pluries* thereupon, *vel causam nobis significes*, and afterwards an Attachment against the Bailies, or him who assesseth the Amercement.

[77.]

Writ de Nativo habendo.

A THE Writ *de Nativo habendo* lieth for the Lord who claimeth the inheritance in any Villain, when his Villain is run from him, and is remaining within any place out of the Mannor unto which he is regardant, or when he departeth from his Lord against the Lords will : and the Writ shall be directed unto the Sheriff ; and if the Sheriff will not serve the Writ, he shall have an *Alias* and a *Pluries*, and Attachment against the Sheriff, if need be.

B But if a man have an Estate but for term of life or for years in a Villain ; it seemeth he shall not have this Writ of *Nativo habendo*, because this Writ is in the nature of a Writ of Right for to recover the inheritance in the Villain, and the same appeareth by the Count in the Writ, *Quere tamē*.

C And the Sheriff may seise the Villain, and deliver him unto his Lord, if the Villain confess unto the Sheriff that he is his Villain ; but if the Villain say to the Sheriff, that he is Frank, then it seemeth that the Sheriff ought not to seise him : as it is in a *Replevin*, if the Def. claim property, the Sheriff cannot replevy the Cattel, but the party ought to sue a Writ *de proprietate probanda* : and so if the Villain say that he is a Free-man, &c. then the Sheriff ought not to seise him, but then the Lord ought to sue a *Pone* to remove the Plea before the Justices in the Common Pleas, or before the Justices in Eyre. But if the Villain purchase a Writ *de Libertate probanda* before the Lord hath sued the *Pone* to remove the Plea before the Justices, then that Writ of

Libertate

vid. 1 & 2
Eliz Dyer
373. where
this Writ
lieth, and
out of what
Court.
And vid.
1 E. 4. 3. 2
good Case.
7 H. 4. 46.

Libertate probanda is a *Supersedeas* unto the Lord, that he proceed not upon the Writ of *Nativo habendo* till the Eyre of the Justices, or till the day the Plea be adjourned before the Justices, and that the Lord ought not to seise the Villain in the mean time. But at this day the Writ of *Libertate probanda* is of little effect, because by the Statute of 25 E. 3. cap. 8. the Lord may seise his Villain and alledge Villainage in an Action brought against him by the Villain, although he hath a Writ of *libertate probanda* depending, which is adjourned before the Justices in *banco*, or the Justices in Eyre.

And if the Lord sue a *Nativo habendo*, and the Villain purchase this Writ of *Libertate probanda*, by that the Sheriff shall not proceed farther in the Writ of *Nativo habendo*, but the whole Plea shall be adjourned before the Justices in Eyre; and then the Writ of *Nativo habendo* and the Record shall be sent before the Justices in Eyre, and the Lord shall declare thereupon, and the Villain shall make his defence, and plead thereunto; and the Villain shall not declare upon the Writ of *Libertate probanda*, nor any thing shall be done thereupon; for that Writ is but a *Supersedeas* to surcease for the time, and to adjourn the Record and the Writ of *Nativo habendo* before the Justices in Eyre: and that appeareth by the forms of the Writs of *Nativo habendo*, and of *Libertate probanda*, which are such:

Rex Vic' salut'. Præcipim. tibi, quod iuste et sine dilatione fac' haber' A. de C. B. Nativum & fugitivum suum, omnib' catallis suis, & tota sequela sua, ubicunque inventus fuerit in balliva tua, nisi sit in Domin' nostro, qui fugit de terra sua post Coronat' Dom' R. Reg', filii Regis Johan': & prohibem. super forisfacti' nostr. ne quis eum injuste detineat. Test, &c.

The form of the *Libertate probanda* is such.

Libertate probanda.

REX Vic', &c. Monstraverunt nobis A. & B. soror ejus, quod cum ipse liberae homines sint, & parat' libertatem suam probare, F. clamans eas nativas suas, vexat eas injuste: Et ideo tibi præcipim', quod si præd' A. & B. fecerint te secur' de libertate sua probanda, tunc ponas Loquelam illam coram Justic. nostris ad primas Affisas, cum in partes illas venerint, quia hujusmodi probatio non pertinet ad te capiend'; & interim eisd. A. et B. pacem inde habere fac', & dic' præd. F. quod tunc sit ibi, Loquelam suam versus præfat' A. & B. inde prosecutur, si voluerit. Et habbas ibi hoc Breve. Teste, &c.

And

G And now by these two Writs it appeareth, that the Lord who sueth the Writ *de Nativo habendo*, shall pursue his Plaintiff upon the Writ of *Nativo habendo*, and shall declare thereupon, &c. and that the Villain shall make defence, and upon that Writ *de Nativo habendo* the Freedom shall be tried. And also it seemeth by these Writs, that a Writ *de Libertate probanda* doth not lie, if not upon a Writ *de Nativo habendo* sued out before by the Lord.

H But it appeareth in 12 H. 3. *Itin. North.* that the Villain sued a *Libertate probanda*, & obtulit se at the fourth day against the Lord, and he did not appear, but made Default, for which, upon the Default of the Lord, the Villain was enfranchised; and he had a Writ unto the Sheriff, that he do not suffer the Lord to trouble him after: *quod vid. in Title Villainage in the Abridgment*; and *vid. 47 H. 3.* a good Case of that matter.

A And when he sueth the *Nativo habendo*, he shall enter a Plaintiff before the Sheriff in the County, as he shall do if he sue a Replevin by Writ unto the Sheriff, he ought to enter his Plaintiff before the Sheriff; so shall he do upon the *Nativo habendo*; and the Plaintiff shall recite how he is his Villain, and how that he fled from him, &c. And by the Writ of *Libertate probanda* that Plaintiff shall be removed before the Justices of Eyre, or before the Justices *de Banco*, and then the matter shall be tried before them, &c. Or the Lord may remove the Plaintiff by a *Pone* before the Justices of the Common Pleas, and thereupon he shall have process against the Villain, &c. for the Sheriff cannot determine the Title of Villainage in the County; and that is proved by the words in the Writ of *Libertate probanda*, viz. *Quia hujusmodi probatio non pertinet ad te capiend'*, &c.

B And it is good for the Lord, that when he sueth the *Nativo habendo* unto the Sheriff, that forthwith he sue his *Pone* unto the Sheriff, to remove the Plaintiff before the Justices of the Kings Bench: for if after the *Nativo habendo* sued, the Lord sue a *Pone* to remove the Plaintiff before the Justices *de Banco*, and before he delivereth the *Pone* to the Sheriff, the Villain sueth *Libertate probanda*, and delivereth the same to the Sheriff, by which the Sheriff adjourneth the Plaintiff before the Justices in Eyre, and returneth the matter upon the *Pone* before the Justices of the King's Bench; now the Justices of the Bench ought not to proceed upon that *Pone* against the Villain, because that the Sheriff hath returned; that he hath adjourned the matter before the Justices in Eyre by the Writ of *Libertate probanda*, *quod vid. Hil. 26 E. 3.* and yet the

11 H. 4. 43.
Gascoign ac.

Fitz. 2. Villainage 39.

Fitz. Villainage 3.
[78]

11 H. 4. 43.
Gascoign.

Old Nat. Bre. 46.
25 E. 3. 49.
Villainary 12
that the party is without remedy, if not against the Sheriff.
Pone

Pone was of elder date than the Writ de *Libertate probanda*, but was not delivered unto the Sheriff before the *Libertate probanda*.

And if a man sueth several Writs of *Nativo habendo* against two, the two may joyn in a *Libertate probanda*, notwithstanding the several Writs.

And a man can joyn in a Writ of *Nativo habendo* but two Villains, but in favour of liberty many Villains may joyn in a *Libertate probanda*.

And it seemeth that the Villain may sue a *Libertate probanda* before the Justices de Banco, as well as before the Justices in Eyre, although there be no such Writ in the Register. But if such Writ be made returnable before the Justices de Banco, it seemeth it is good, and they shall proceed thereupon as if it were before Justices in Eyre.

In a Writ of *Niese*, if the Plaintiff be Non-suit after appearance, the Defendant shall be for ever enfranchised; *quod vid. M. 12 E. 2.* and upon departure in despite of Court, where he appeareth, and saith he will seek Counsel, and afterward he is demanded, and maketh Default, there the Villain shall be for ever enfranchised: and so upon a *Retraxit*. If the Plaintiff say that he will not pursue his Writ of *Niese*, the Defendant shall be enfranchised for ever.

29 E. 2. *cont.* before Appearance, 19 E. 2. Vill. 31. 39 E. 2. Fitz. Vill. 34. the Pl. count upon a Confession, and the Def. acknowledge it, and after the Plaintiff was Non-suit, and *per Cur.* it is an Enfranchisement for ever. 30 E. 1. Vill. 46. *Harvy & Mitton*, she is enfranchised but during the Marriage Broughton *cont.* King took the difference where the Lord marieth the Niese, and where a stranger marieth her.

28 Aff. 34. And if a Free-man marieth a woman who is a *Niese* unto another, she shall be for ever free, although that the Husband dieth, and she survive him, and that by Britton in his Book in *favorem libertatis*. And it stands with reason that the Law be such, because that she and her Husband are but one person in Law, and she ought to be of the same nature and condition to all intents as her Husband is; but the Husband is for ever free without any condition in Law or otherwise, and by consequence the Wife ought to be of the same condition and nature as her Husband is; and then if he be once clearly discharged of Villainage to all intents, she cannot be a *Niese* afterwards without her own special act, as by Divorce, or Confession in a Court of Record, and that in favour of Liberty: for a Free-woman shall not be Villain, for taking of a Villain to be her Husband.

the Seifure is suspended. 13 H. 3. Vill. 4. E. she shall not be produced to prove Villainage during the Coverture. 30 E. Vill. 46. *cont.* 31 E. 3. Vill. 21 *cont.*

H In a Writ of Niefc it behoveth the Lord who sueth the 13 E. 1. vill: Writ to bring with him two persons at the least who are of 38. 19 H. 6. the Villains Blood, that will confefs them to be Villains, 32. ac. 19 E. otherwise the writ shall abate: And what shall be sufficient 2. Vill. 32. proof, what not, see in the Title of Villainage in the A- Cousin Fe- bridgments. But in a *Nativo habendo*, after the Plea is re- not be moved by a *Pone*, if the Defendant will confefs himself to brought to be Villain, then the Plaintiff needeth not to bring any proof prove the Male Vil- thereof. lain. 13 E. 3.

I If two bring a *Nativo habendo*, the Non-suit of one of them is the Non-suit of them both; for Summons and 36. ac. Severance lieth not in that Writ. But in a *Libertate probanda* 46. ac. it is otherwise, for there the Non-suit of the one shall not Old Tenures Br. Vill. 68. prejudice the other.

K And it appeareth by the Register, that the Sheriff cannot seise the Villain by force of this Writ of *Nativo habendo*, although that the words of the Writ are, *Haberi facias A. nativum & fugitivum suum*; for these words give him power to hold Plea, and not otherwise, as it appeareth in 2 H. 4. in a *Faux Imprisonment*. But if the Villain doth confefs 2 H. 4. 24. unto the Sheriff that he is a Villain, then it seemeth reasonable that the Sheriff ought to seise him, saving the Opinion of that Book. But the Statute now maketh the matter clear that the Lord may seise him, and so the Sheriff at his request. And the Process in the *Nativo habendo* is Summons, Attachment and Distress.

M In a *Nativo habendo* the Plea was removed by a *Pone*, and the sheriff returned thereupon *Non est inventus*, for which a *Capias* was awarded, and after upon return of *Non est inventus* a *Latitat* was awarded, upon a Surmise made that he was in a Forein County. P. 7 H. 6.

N And in the *Libertate probanda* the Process is as upon the *Pone* sued to remove a Plaintiff in the County upon a Replevin, Sum', Attachment and Distress. And the form of the *Pone* upon a *Nativo habendo* is such:

Rex Vic', &c. Pone ad Petitionem Petentis, Loquel. quæ est in Com. tuo per Breve nostrum inter A. & B. quem idem A. clam. Nativum & fugitivum suum; & sum', &c. præd. B. quod tunc sit ibi, præf. A. inde respons. Et habeas ibi Sum', & hoc Breve, & aliud Breve.

[79]

A And if the Villain do remain in Ancient demesne of the King in the Kings hands, and hath remained there by a year and a day, then the Lord cannot have nor maintain this Writ of *Nativo habendo* so long as he remaineth there: But if he hath not remained within the Ancient Demesne of the King

King a year and a day, but for half a year, or other time which doth not make a year and a day, then the Lord shall have such Writ unto the Sheriff.

Rex Vic', &c. Præcipimus tibi quod nisi A. quem B. clamat Nativum & fugitivum suum in Com. tuo, per Breve nostrum manserit in Dominico nostro de S. per unum annum & unum diem sine calumnia, non remaneat Loquela præd. in Com' præd', eo quod manserit in Dominico nostro per minus temporis. Teste, &c.

But it appeareth by the Writ, that if the Lord claim him within the year and day that he came into the Ancient demesn, that then the Villain shall not have advantage of his staying there: but it seemeth that the Lord ought to claim the Villain within every year and day that the Villain stayeth within Ancient demesn, as he shall make his continual claim to save his Entry into any Land. But if the Villain do remain in any other Mannor than in Ancient demesn, which is in possession of other Lord than the King, and there stayeth a year and a day, or for many years, without any claim made by the Lord, notwithstanding that the Lord may take and seise him, or have a special Writ of *Nativo habendo* against his Villain directed unto the Sheriff, as above is said.

If a man purchase a Villain of another unto him and his Heirs, and the Villain runneth from him, he shall not have this Writ of *Nativo habendo*, because he hath no proof of his Blood who will confess them to be Villains unto the Plaintiff; and if he bring men of the Villains Blood, who confess them to be Villains to a stranger, and not to the Plaintiff, the same is not sufficient proof. *Quare tamen.*

And the Lord may have a Writ unto the Sheriff to assist him to distrain his Villains, and the Writ is: *Rex Vic', &c. Præcipimus tibi, quod sis in auxilium A. de F. ubi ipse non sufficit ad distringend Villanos suos de N. ad faciend' ei conf. & servitia debita & consueta, Teste, &c.* See the Statute *An. 1 R. 2. c. 6.*

And when the King makes Tallage of his Ancient demesn Lands in his hands throughout the Realm, then the other Lords who have Ancient demesn Lands of the King in Fee-farm shall have such Writ to tax them; and the Writ is such:

Rex Vic' &c. Quia Dominica nostra per Angl. talliari fecimus, tibi præcipimus, quod si Manerium de C. aliquando fuerat Dominicum nostrum, vel Progenitorum nostror. quondam Reg. Angl', & hucusque consueverant talliari, tunc A. rationale Tallagium

Tallagium habere fac' de liber. Tenentibus suis in Manerio præd', sicut prius fieri consuevit. Teste, &c.

E And if the Kings Villains do convey themselves out of the Mannor, then a special Writ shall be directed unto the Sheriff, that he enquire by the Oaths of honest and good men the Names of them, and where they abide, and that he make them return, and abide within the Mannors as before.

F If a Woman sueth a Writ of *Libertate Probanda*, the form of the Writ is such: *Monstravit nobis Alicia, quod cum ipsa libera femina sit, &c. et parata libertatem suam, &c. ut supra.*

Writ de Securitate Pacis.

G **T**His Writ lieth when a man is in fear or doubt that another will beat or assault him, and lieth properly where one man doth threaten another man to kill him, beat him, or assault him; then may he come into the Chancery, and pray to have such Writ unto the Sheriff, and the form of the Writ is such,

*Rex, Vic' Linc' salut'. Quia A. de B. nobis gravit. conquest. est, quod C. ei de corpore suo manifeste minat'; Tibi præcipimus, quod eidem A. de præf. C. firmam Pacem nostram, secundum consuet. Angl. habere fac. ita quod secur. sis, quod eid. A. de corpore suo per præf. C. vel per procuratorem suum dampnum vel periculum non eveniat. Teste &c. Or thus: de incendio domorum suarum manifeste minat. Tibi præcipimus, &c. ita quod, &c. eid. A. de domibus suis præd. per huiusmodi incendium dampnum, &c. And a man may have a Writ for the safety of his Body and for the burning of his Houses all in one Writ. And he may have an *Alas* and a *Pluries*, and Attachment against the Sheriff, if he does not his Office, &c.*

H And by the ancient course of Law he ought to take his Oath upon a Book before he have this Writ, before a Master of the Chancery: But now they use to sue forth such Writs by their friends, who will sue for them without any Oath made; and the same is ill done, because they are many times sued, more for Vexation than for any good cause; and the Justices of the Kings Bench will not grant any Writ for Surety of Peace, without making Oath that he is in fear of corporal damage. And the Justices of Peace ought not to grant any Warrant at the Suit of any one to find Sureties of Peace, if the party who doth require the same will not take his Oath that he requireth the same not for malice, but for the safety of his Body.

A

And

Writ de Securitate Pacis.

And if a man hath sued a Writ against one directed unto the Sheriff, and the Sheriff take security of him to keep the Peace, and afterwards he breaks the Peace against him who demanded the same; he which demanded the Surety of Peace shall have Attachment against him to find Sureties; and the Writ is such:

Rex Vic', &c. Si A. fecerit, &c. pone, &c. B. quod sit coram Justic', &c. ostens. quare cum præf. B. præd. A. de corpore suo minaret', & præf. A. ea occasione brevis nostr. de Pace ind. habend' tibi detulisset, idem B. licet Securitat. tibi præstiterit, quod per ipsum vel procurat' suum præf. A. de corpore suo dampnum vel periculum non evenir', id. B. nihilominus in præfat' A. apud W. ci ar. insult. fecit. & ipsum, &c. in nostri contempt. manifest', & ipsius A. grave dampnum, & contr. pacem nostram: & habeas ibi Pleg. & hoc Breve. Teste, &c.

And upon this Writ the Plaintiff shall recover damages, and the Defendant shall be fined for his contempt, if he be found guilty.

And if any one will have a Writ for surety of the Peace against any one who dwelleth within the Cinque-Ports, then he shall have a Writ out of the Chancery directed unto the Constable of Dover, and unto the Warden of the Cinque-Ports, and the Writ shall be such:

Rex dilecto & fideli suo N. Constabulario Castri sui Dover', & Custod' Quinque Portuum suorum, salutem. Mandamus vobis, quod audita querela A. de eo quod B. qui est de Libertate Quinque Portuum, &c. minat', vocatisque coram vobis partibus præd', auditisque hinc inde eorum rationibus. eidem A. super hoc debitum & festinum justitiæ complementum fieri faciatis, prout de jure & secundum legem & consuet. Portuum prædictorum fuer. faciend'. & alias in casu consimili fieri Consuevit. Teste, &c.

But it is a common opinion, The Security which the Sheriff ought to take of the party who ought to find Sureties for the Peace, ought to be taken by Bond, that is to say, to bind the party and his Sureties by Bond, that he keep the Peace, and that he burn not the Houses, &c. But now after the Statute of 1 E. 3. cap. 6. which appointeth that certain persons shall be assigned in the Chancery to keep the Peace, there are other forms of Writs for the ease of the People who will have the Peace against other persons, which Writs shall issue out of the Chancery; and some of them are directed unto the Justices of the Peace, and unto the Sheriff, and some are directed only unto the Sheriff: and these Writs are of other forms, which is such:

D Rex dilectis & fidelibus suis, I, &c. & sociis suis Justiciariis nostris ad Pacem nostram in Com. S. conservand. assign. salutem. Or thus, Custod. Pacis nostræ in Com. S. &c. & Vic. ejusd. Com., & eorum cuilibet, salutem. Or thus, Vic. S. salutem. Supplicavit nobis A. quod cum ipse de vita & mutilac. membrorum suorum, necnon de incendio domorum suar, per E. graviter & manifeste comminatus existat, velimus pro securitat. ipsius A. in hac parte provider; Nos supplication. præd. annuentes vobis, vel tibi præcipimus, firmiter injungentes, quod præd. E. coram vobis, vel te, corporaliter venire faciat, & ipsum ad sufficientes Manucapt. inveniend., qui eum manucapere voluerint sub certa pæna sibi per te vel vos rationabiliter imponend., pro quo nobis responder. voluerint, vel volueris; Or thus, Et ipsum E. ad sufficient. Securitat. inveniend., sub pæna centum libr. ad opus nostrum solvend., vel quilibet eorum sub pæna, &c. quod ipse dampn. vel malum aliquod eidem A. de corpore suo, vel de domibus suis per hujusmodi incendium, non fac., nec fieri procurabit, quovis modo compellatis, vel com. ellas. Et si hoc coram vobis vel te facere recusaverit, tunc ipsum E. proxim. gaol. nostræ committatis, vel committas, in eadem salvo custod. quousque hos gratis facere voluerit. Et cum Securitat. illam sic ceperitis, vel ceperis, nos inde in Cancellaria nostra sub sigillis vestris vel alicujus vestrum, vel sub sigillo tuo, distincte & aperte sine dilatione reddas certiores, certificetis, vel certificet indilate, hoc Breve nobis remittentes, vel remittens.

E And for this form of Writ, when the Writ is in the plural number, the Writ is directed unto the Justices of Peace, or unto the Justices and Sheriff. And when it is in the singular number, the Writ is directed unto the Sheriff only, or unto one Justice only.

F And if the Husband threaten his Wife to beat or to kill See 25. b. f. her, she shall have this Writ :

Supplicavit nobis A. uxor B. quod cum ipsa de vita sua & mutilatione membrorum suorum per præd. B. &c. [ut supra, usque ibi, respond. voluris] quod ipse [r. s. f. A. bene & honeste tractabit & gubernabit, ac dampn. & malum aliquod eid. de corpore suo, aliter quam ad virum suum ex causa regiminis & castigationis ux. sue licite & rationab. pertin. non fac., nec fieri procurabit, quovis modo compellatis, &c.

G And if a man be in a variance with other men, and he is in doubt that damage or hurt will come unto him, or his Servants or his Goods, by reason of this variance; then he shall have a special Writ against them directed unto the Sheriff, that he cause them to find Security that they do not damage or hurt the other in his Body, or his servants, or other

[81.]

his goods, in a certain sum, &c. And if they will not find Security, that then he arrest them and keep them in Prison, until they will find Sureties: And that the Sheriff certifie all that is done upon the same into the Chancery, upon pain, &c. as it appeareth by the Register. And that Security ought to be taken by Recognizance, as it seemeth; *tamen querere*. And when a man hath purchased such Writ of *Supplicavit*, directed unto the Justices of Peace, or unto the Sheriff, or unto both, against any man, then he against whom the Writ is sued may come into the Chancery, and there find Sureties in the Chancery, that he will not do hurt or damage unto him that sueth the Writ; and then upon that he shall have a Writ of *Superfedeas* out of the Chancery, directed unto the Justices of Peace, or unto the Sheriff, or unto one of them, reciting how that he hath found Sureties in Chancery according to the Writ of *Supplicavit*, and reciting the Writ of *Supplicavit*, and the manner of Security that he hath found, and the Sum of money in which they are bounden; commanding the Justices and Sheriff, that they surcease to arrest him, &c. or compell him to find Sureties, &c. and if they have arrested him for that cause, and for no other, that then they deliver him, &c. See the form of the Writ in the Register. And if the party who ought to find Sureties cannot come into the Chancery to find such Surety, then his friend may purchase a *Superfedeas* in the Chancery for him, reciting the Writ of *Supplicavit*, &c. and that such a one and such a one are bounden for him in the Chancery in such a sum, that he shall keep the Peace according to the Writ of *Supplicavit*: and the Writ shall be directed unto the Justices of the Peace and Sheriff, that they or some of them take Surety of the party himself, according to the Writ of *Supplicavit*, for to keep the Peace, &c. and that then they surcease to arrest him; and if they have arrested him for that cause, that they then deliver him.

And sometimes the Writ of *Supplicavit* is made returnable into the Chancery at a certain day: and if it be so, then if the Justices do not certifie the Writ, nor the Recognizance, and the Security which is taken, the party who sued the *Supplicavit* shall have a Writ of *Certiorari* directed unto the Justices of Peace, to certifie the Writ of *Supplicavit*, and what they have done thereupon, and the Security which is found, &c. and so the party shall have such *Certiorari* unto the Justices of Peace, to certifie the Security taken upon *Supplicavit*, although the Writ of *Supplicavit* be not returnable in the Chancery.

And

C And so if a man demanded surety of Peace in the County against any man, he shall find Sureties in the County before the Justices of the Peace, &c. he who demandeth the security may sue a Writ of *Certiorari* directed unto the Justices of Peace, to remove the surety of Peace, and the Recognisance taken thereupon; and to certify that Recognisance, and security taken, under the Seals of the Justices of Peace, or one of them. And if the *Certiorari* be sued upon a Writ of *Supplicavit*, then the *Certiorari* shall rehearse the Writ of *Supplicavit*: and if it be sued upon surety demanded in the County without a *Supplicavit* sued, then the form of the Writ of *Certiorari* is such:

Rex Custodibus Pacis sue in Com. L. & eorum culibet, sal. Volentes certis de causis certiorari super tenorem cujusd. Securitatis Pacis nuper coram R. B. & sociis suis Custodibus Pacis nostre, & Just. nostris ad diversa Felon', Transgr. & Malefacta in Com. L. audiend' & terminand. assign. de R. de W. de eo quod ipse damn. vel malum aliquod B. de F. aut alicui populo nostro non fac. nec fieri procurabit, ex officio vestro ca. t. que quid. Securitas penes vos residet, ut dicit; vobis mandamus, quod nos inde in Cancell. nostra sub sigillis vestris vel unius vestr. distinet. & apert. sine dilatione reddatis certiores, hoc Breve nobis remittentes. Teste, &c.

D And when the Writ of *Supplicavit* is directed only to the Sheriff, then the *Certiorari* shall be directed unto the Sheriff only, to make return of the security found, if he have taken any security, &c.

And if a man find Sureties to keep the Peace against certain persons before the Sheriff, without any Writ of *Supplicavit* sued by him who demandeth surety, and without the Writ used of ancient form; then the party who demanded the Surety may have a *Certiorari* unto the Sheriff to certify the security taken by him into the Chancery, &c. without making mention in the *Certiorari* of any Writ sued forth to cause the Sheriff to take such security; and by that *Certiorari* it seemeth, that the Sheriff *ex officio* may cause the party to find surety to keep the Peace, if any one pray the Sheriff to have such surety, and that the Sheriff bind them by Recognisance, and that he certify the same into the Chancery by the *Certiorari*: for if he certify an Obligation taken for security, that certificate cannot make the Bond to be a thing upon Record, and the party cannot be bound unto the King but by matter of Record, or unless that he will come into the Court, and confess the same to be his Deed, and pray to have the same enrolled. And it

Vid. 12 H. 7. 17. by Fines, by the Common Law the Sheriff is Conservator Pacis.

Vid. Lamb. 110. 11. and now by the Statute of 33 H. 8. cap. 39. it is clear that Bond shall not be taken.

seemeth that the Law is such, because that by the Common Law the Sheriff is Conservator of the Peace, and hath the keeping and the custody of the County for the time that he is Sheriff; and the same appeareth by his Commission and Letters Patents which he hath, the words of whose Patents are such:

Rex, &c. Commisimus vobis Custodiam, &c. and by that he takes his Authority, the which is a matter of Record, as the Commission which was made to them who shall be Justices of the Peace, the which Commission giveth them Authority to hear, determine and enquire of all those things which are done against the Peace. And by reason of that Commission they have power to bind men by Recognisance to keep the Peace, upon Complaint made unto them by any person: and yet there is not expresse Authority given them by the Commission to take that Recognisance, but it followeth, that because they have authority to cause men for to keep the Peace, and to hear and determine offences against the Peace, they have power to bind men by Recognisance so to do; for every thing which they have done by virtue of their Commission ought to be taken as a matter of Record. And by the same reason the Sheriff, because that his Patent is of Record, and he is Conservator of the Peace in every place, every Obligation which he taketh for to keep the Peace shall be in Law taken for a Recognisance, and especially when it is certified in the Chancery by *Certioravi*. But yet all the Pleas that are holden before him in the County are not of Record, nor Pleas holden before him in the County by Writ of Justices are not taken as matters of Record; for these Pleas are holden before him by reason of the Courts which he hath by reason of his Office, as the County and Hundred Court, &c. But the Leets and Torns which are for the Commonwealth, as for keeping of the Peace, these are Courts of Record, and by consequence for keeping of the Peace the Sheriff is Judge of Record, and may take Recognisance for the keeping of the Peace *ex officio*; but if he so do, and take Recognisance upon a Writ of *Supplicavit*, or other Writ directed unto him to take Sureties for keeping of the Peace, it is the stronger; but give credit to better reason, and therefore *quare* thereof.

[82.]

Vide 7 H. 4.

34. ac.

Crompton

35. l.

*Writ de Auxilio ad Filium suum Militem faciend.
vel ad Filiam Maritand.*

A **T**He form of the Writ is such :

*Rex Vic', &c. Præcipimus tibi quod iuste &c. fac. habere
A. rationabile Auxilium de Militibus & liberis Tenentibus suis
in Ballivâ tua, ad primogenit. fil. suum Milit', faciend'. vel ad
primogenit. filiam suam maritand', juxta formam statuti de com-
muni consilio regni nostri Angl. inde provisi. Teste, &c.*

B And a man shall not have this Writ before that his Son
hath accomplished the age of fifteen years, nor for to mar-
ry his Daughter before she be of the age of seven years, as
appeareth by the Statute of *West. 1. cap. 35.*

C And he who holdeth his Lands by a Knights-fee shall pay
20 s. unto the Lord, to make his Son a Knight, or for to
marry his Daughter, and no more.

And the Tenant who hath Lands of the yearly value of
20 l. holden in Socage, he shall pay 20 s. unto the Lord to
make his Son Knight, or for to marry his Daughter.

And he who holdeth by half a knights fee shall pay 10 s.
and he who holdeth Lands in Socage of the value of ten
pounds by the year shall pay 10 s. And so according unto
the rate of the value of the Socage-Land, and according
unto the quantity of a Knights-fee, he shall pay his Aid, and
that by the Statute before-mentioned.

D But this Aid, to make the Son a Knight, or to marry his
Daughter, the Lord was to have by the Common Law of
his Tenants, and the Statute puts it only in certainty. And
the Lord may distrain his Tenants for this Aid, and avow for
the same if he will; and he need not for to sue this Writ
E unless he will. And this Writ is directed unto the Sheriff,
and he may sue an *Alias* and a *Pluries*, and an Attachment
against the Sheriff, if he will not assist the Lord to distrain
his Tenants for this Aid.

And the King's Tenants in like manner shall pay Aid unto
F the King to make his eldest Son a Knight, or for to marry
his eldest Daughter, &c. *viz.* every one who holdeth by a
Knights fee 20 s. and he who holdeth by half a Knights fee
10 s. and so according to that rate.

And in like manner every one who holdeth of the King
in Socage 20 l. Land shall pay 20 s. to make his eldest Son
Knight, or for to marry his eldest Daughter. And he who
holdeth 10 l. Land in Socage shall pay 10 s. and that is ap-

pointed by the Statute *de Provisionibus*, An. 25 E. 3. cap. 10. And the Statute setteth the Aid certain, because that before the said Statute the King will distrain for more to make his Son a Knight, or to marry his Daughter; but now the Statute appointeth that the King shall have no more.

And if the eldest Son dieth before he cometh to the age G of fifteen years, or before the Lord hath levied the Aid to make him Knight, then the Lord shall have Aid for the younger Son, to make him Knight when he cometh to such age, and yet he is not *primogenitus filius*, as the Writ doth suppose, but he is the *Primogenitus* which is then alive, and that is sufficient, for he ought for to be Heir apparent. And so it is if the eldest Daughter dieth before the Lord hath levied Aid of his Tenants for to marry her, then he may levy Aid for the next eldest which is then living, after she is of the age of seven years.

And by the Statute the Writ which shall be directed unto H the Sheriff to levy such Aid for the Lord, shall mention that the Son is of the age of fifteen years; and if it be for the Daughter, it shall mention she is of the age of seven years, otherwise the Writ is not good. But that form is not in the Register, for it seemeth the Register was made before the Statute of *West. 1.* and therefore the Writ ought to be according as the Statute ordaineth it.

[83.]

See after
122 g.

And if the Lord have Aid to make his Son Knight, or to I marry his Daughter, and dieth before he hath paid the same, then the Son or Daughter shall have an Action of Debt against the Fathers Executors for the money: and if the Executors have no goods of the Lord, then the Daughter shall have an Action of Debt against the Fathers Heir, for so much of the money as she wanteth of that which her Father had levied for to marry his Daughter: And that is by the Statute of *West. 1. ca. 35.* And he who holdeth by grand Serjeanty or A petit Serjeanty shall not pay Aid to make the Son a Knight or to marry the Daughter, as it appeareth *M. 11 H. 4. 32.*

And if the Lord doth levy Aid for the Marriage of his B Daughter, and afterwards marieth her, then the Daughter shall not have an Action of Debt against the Fathers Executors for the money levied, &c. But if the Daughter be not married in the life-time of the Father, &c. by him, then the Action doth lie. And so it seemeth, that if the Son be not made Knight in the life-time of the Father, that he shall have an Action against the Fathers Executors for the money levied to make him Knight.

Writ

Writ de Scutagio habendo.

C **T**His Writ for Escuage lieth in case where a man holdeth Lands of the King by Knights Service, to which Homage, Fealty and Escuage is appendant: and he who holdeth of any Lord by such service, who holdeth over of the King by the like Services, when the King maketh a Voyage Royal in War against the *Scots* or against the *Welsh* in proper person, or by his Lieutenant, then he who holdeth by Knights Service ought to go in person, or find a man to go for him, in the War with the King, or his Deputy in that War, for forty days at his own cost: and if he do not go, or not find a man so to do for him, then he shall pay for that default, and not doing of his service, such sum of money as shall be assessed by Parliament; for a Knights fee so much, and for half a Knights fee so much; and so according to that rate. And then he who holdeth by a whole Knights fee shall pay so much for Escuage as the Parliament doth assess that a whole Knights fee shall pay, if he hath not done the Service; and he who holdeth by half a Knights fee shall pay according to the rate; and those who have done their Services and gone in the War, shall not pay any thing. And that sum of money is called Escuage, *Servitium Scuti*.

Vide Litt.

19, and 20.

Vide 16 El.

Dyer 329.

that he who holdeth by the moiety of a Knights fee, holdeth by Knights Service, and so it shall be intended, if it be not found to the contrary.

D And if a man holdeth of the King by Knights Service, and to go with him in his War, &c. then that Lord shall have Escuage of his Tenants who hold of him by the like Service; but the sum which he shall have and levy ought to be assessed by Parliament (as afore is said) before he distrain for the same.

E And if a man hold of any Lord, to guard his Castle in time of War or to blow a Horn in the time of Invasion of Enemies, the same is Knights Service: but it seemeth that for those Lands they shall not pay Escuage, if they do not their Services, but the Lord shall distrain them for not doing their Service, and shall have recompence for the same. So that none shall pay Escuage but only those who hold by such services, to go into the War, or to find a man to go, &c. *tamen Quere.*

F And if he who holdeth of the King by Knights Service to go with the King in War, do his Service, &c. then he shall have a Writ for him, directed unto the Sheriff, to have Escuage of those who hold of him by the like Service. And the form of the Writ shall be such:

Rex

Rex Vic', &c. quia dilectus, & fidelis noster W. D. habuit servicium suum nobiscum per precept. nostrum in Exercit' nostro Scotiæ an. regni nostri primo; or thus, fuit nobisc. per precept. nostrum in Exercit', &c. an'. &c. sicut per Rotulos A. Constabularii nostri Exercitus nostri præd', nobis constat; or thus, fecit finem nobisc. pro servic' suo in Exercitu nostro Scotiæ, an', &c. sicut per Certificat Thesaurarii & Baron. nostror. de Scaccario in Cancellar' nostra de mandato nostro missam nobis constat: Tibi præcipimus, quod eidem W. D. habere fac. Scutagium suum de Feodis milit. quæ de ipso tunc tenebant in Bal. tua, vic. octo solid. de Scuto pro Exercitu prædict: & hoc nullatenus omittas. Teste, &c.

And by that it appeareth, that if the King's Tenant goeth with the King's Lieutenant or his Deputy in War, that the Constable of the Host ought to certifie the same into the Chancery, before the King's Tenant shall have a Writ to levy the Escuage of his Tenants; and if the King's Tenants do agree with the King for his going, &c. then the King ought to be certified thereof in the Chancery by the Treasurer and Barons of the Exchequer, before that he shall have a Writ to levy the Escuage of his Tenants.

And by that it appeareth, that if the King's Tenant do not go in the voiage, nor agree with the King for that voiage, that then he shall not have Escuage of the Tenants, nor distrain the Tenants for the same.

And if a man holdeth of the King by Socage, and others hold of him by Knights Service, and the King maketh a voiage of War into Scotland and Wales; now it seemeth he shall not have Escuage of his Tenants, if he goeth not with the King in the voiage: but if he goeth with the King or his Deputy, or agree with the King for that voiage, then it seemeth he shall have Escuage of his Tenants, and shall have the aforefaid Writ. And it is not material whether he hold by Knights Service, or in Socage.

And if there be Lord, Mesn and Tenant, and each holdeth of the other by Knights Service, if the Tenant go into Scotland by the King's common Summons, then the Mesn shall not pay Escuage: *quod conceditur per cur. Trin. 5 H. 5.*

[84.] And if a man holdeth Lands by such Service, that he shall pay a Penny, or a pair of Spurs, when Escuage runneth, &c. the same shall not properly be Escuage, as it appeareth in 15 E. 2. Title Avowry in the Abridgments.

vid. Title
Avowry,
215.
See before
63 E.

And *vid. 19 R. 2.* that Garder of a Castle doth counter-vail Escuage, so that his Heir shall be therefore in Ward, and so of grand Serjeanty; and yet it seemeth they shall not pay Escuage, *Quod vid. in Title Gard.* And

C And in Title *Quare Impedit*, in the Abridgments, that Escuage certain doth not make Knights Service, *Hill. 5. 3.*

D And if there be Lord, and many several Mesnes and Tenants, and each holdeth by several Knights Service, if the Tenant paravail of the Land doth the Services, and goeth with the King in War, &c. the same shall excuse all the other Mesnes; for for one Land but one Service can be demanded, viz. to go, or to find a man to go, &c and so the Mesne paramount here is excused, because that the Service is done by the Tenant, &c.

E And when the King will levy Escuage of his Tenants, he useth to grant a Commission to certain persons. And the form of the Commission is such :

Rex dilectis, &c. Assignavim. vos ad Scutag. nostr. de Exercitu nostro Scotiæ, an. reg. nostri primo levand. & colligend. in Comitatu. K. tam infra Libertatem, quam extra, de Feodis Milit. quæ tunc tenebant de nobis in capite, sive de Escaetis & Honorib. in manu nostr. tunc existit, sive de perquisito progenitor. nostror, aut nostri, quam de Feodis Milit' quæ tenent' de Archiepiscopatib', Episcopatib', Abbat', Prioratib'. de aliis Dignitatib. vel Offic. Ecclesiast. quibuscunque, quæ tunc in manu nostra fuer', ac de hereditat. Heredum infra etat. & incustod. nostra existent', viz. xl. solid de quolib' Feodo pro Exercitu suprad' ; ita quod omnes denarios inde provenient. habeatis ad Scaccar. nostr. particulat. ad citius quod poteritis nobis ibid. solvend'. Et quia quamplura de Feod. præd. ad manus diversor. devener. tam temporib. progenitor. nostror. quam nostro, quædam viz. per descensum hereditar. tam in partes quam alio modo, & quædam per alienac. inde diversimode factas Assignam. vos ad inquirend. per sacrament. probor. & legal. homin. de quolib. Hundredo in Com. præd. tam Milit. cinctor. gladio, quam alior. per quos rei veritas melius scire poterit, qui tenuer. Feoda militaria tempore præd. in eod. Com. aut aliquam partem Feodor. eorund. ut de Corona nostra Angliæ, vel de perquisito progenitor. nostror. & nostro, & de Archiep. Episcopat. Abbat. Priorat. & aliis Dignitatib. & Officiis antedictis, ac etiam de hereditatib. Hered. præd. tunc infra etatem existent. & quot Feod. & quantas partes Feodi quilib. Tenens hujusm. tunc tenuit, & in quibus Vill. distincte, & qui fuer. antecessores illor. qui tenent per descensum hereditar. et qui alio modo, ac etiam qui Heredes fuer. infra etatem, et in custod. nostra, et qui Archiepiscopat. Episc. Abbat. et Priorat. et alæ Dignitat. quæcunque vel Officia tempor. illo vacabant, temporal. quor. custod. ad nos pertinet, Et inde vobis in fide qua nobis tenemini firmiter injungendo mandam. quod ad certos dies, &c. præmis. faciat. et expleatis in forma præd. et Inquis-

Inquisition. super præmis. distincte & aperte factas, quæ de singulis Feodis, & de nominib. & cognominib. ea singulat. quond. tenevunt dum integr. tenebantur, & eor. qui postmod. ea successive tenuer. post partitiones eor. int. hæred. participes, vel per alienationes, ut præd. est, apertam faciant mentionem, habeat. ad Scaccar. præd. circa fest. Pasc. proxim. futur. sub sigillis vestris et sigillis eor. &c. fact. fuer. Mandam. etiam Vic. nostro Com. præd. quod ad certum, &c. fact. fuer. tot & tales prob. & legal. homines tam Milit. gladio cinctos quam alios de Balliv. suis, tum infra Libertat. quam extra, per quos rei veritas melius sciri poterit & inquiri, & quod vobis in præmis. pariat. & intendat. Mandam. etiam Thesaurario & Baronibus nostris de Scaccar. præd., quod hujusm. Feod. ad Scaccar. præd. reperta. Terras & tenement. in Com. præd. tangentia, vobis celeriter in scriptis mittant in evidentiam, & pro majore expeditione præmissorum. In cujus, &c. Teste, &c.

* 19 E. 2.
Br. Tenures
68. Lessee
for life may
do Escuage.
6 E. 2. Gard
12. he shall
have the
Ward, be-
cause it
is a Profit;
he shall
have Escu-
age, because
it is a Suit
real, by
Wille.
Scrope cont.

And a Venire Facias shall be sent unto the Sheriff close upon this Commission, and another Writ close unto the Treasurer and Barons, &c. quod Feoda mittant, &c.

And now it appeareth by this Commission, that the King shall have Escuage of the Tenants who hold of these Lands or Mannors which the King hath in his hands by reason of Ward, or by reason of the Vacancy of a Bishoprick, &c. Or if he have an Estate for years in the Seigniorie, he shall have Escuage of the Tenants, &c.

And so shall another Lord have, if he have a Term for years or for life in the Seigniorie, if he go in voyage with the King in War into Scotland, &c. he shall have Escuage then of the Tenants which hold of him by Knights Service; for the Tenant is not bound to go, but for to defend his Lord, or to find a man for to defend him; and then if the Lord do not go into the War, the Tenant is excused.

[85]

Writ de Securitate inveniend. quod so non divertat ad partes exteras, sine Licentia Regis.

vid. 1 Eliz.
Dyer 165.

BY the Common Law every man may go out of the Realm^A Bro Merchandise, or on Pilgrimage, or for what other cause he pleaseth, without the King's leave; and he shall not be punished for so doing: but because that every man is of right for to defend the King and his Realm, therefore the King at his pleasure by his Writ may command a man that he go not beyond the Seas, or out of the Realm, without Licence; and if he do the contrary, he shall be punished for disobeying the Kings Command. And it seemeth that this Command may

may be made by the King's Writ under the Great Seal, and also under the Privy Seal, or his Signet; for by the Law the Subject is bounden to take notice of every of the King's
B Seals in such case, as well as of the Great Seal.

And there are two manners or forms of such Writs; one is directed unto the party, and the other unto the Sheriff, commanding him that he cause the party to find security that he shall not go out of the Realm without the King's Licence. And the first Writ is such :

Rex I. de B. salutem. Quia datum est nobis intelligi, quod tu versus partes externas absque Licentia nostra clam destinas te diverter', & quamplura nobis & Coronæ nostræ præjudicialia ibidem prosequi intendis, in nostri contemptum & præjudicium, ac contra proclamatiōes & inhibitiones nostras in te sæpius factas: Nos, hujusmodi contemptui & præjudicio obviare volentes, tibi districte sub periculo quod incumbit prohibemus, ne versus partes externas absque licentia nostra speciali aliqua iter te diverteras, nec quicquam ibidem prosequi attemptes, seu attemptari fac quod in nostrum seu nostræ Coronæ nostræ præjudicium cedere valeat quovis modo, nec aliquem ibidem mitas & hac causa. Teste, &c.

C And also the King by his Proclamation may inhibit his Subjects, that they go not beyond the Seas, or out of the
12 & 13 E. 1.
liz. Dyer
296. ac.
Realm, without Licence, and that without sending any Writ or Commandment unto his Subject; for perhaps he cannot find his Subject, or know where he is, and therefore the King's Proclamation is sufficient in it self. And if the Subject do contrary thereunto, it is a contempt, and for so doing he shall be fined to the King.

D The other form of Writ directed unto the Sheriff is such :

Rex Vic', &c. Quia datum est nobis intelligi, quod A. B. Clericus, versus partes externas, ad quamplura nobis & quampluribus de populo nostro præjudicialia & dampnosa ibid. prosequend', transire proponit: Nos, malitiæ suæ resist. volentes in hac parte, tibi præcipimus, firmit. injungentes, quod præd. A. B. coram te corporalit. venire fac', & ipsum ad sufficientes Manuceptores inveniend', qui cum manucaper e voluerint, sub certa pœna eis per te rationabilit. imponend', pro qua nobis respond. volueris; Orthus, & ipsum A. B. ad sufficient. securitatem inveniend', sub pœna centum librar' ad opus nostr. solvend', vel quilibet eor. sub pœna, &c. quod ipse versus aliquas partes externas sine licentia nostra speciali se non diverstat, nec quodcunque ibid' prosequatur aut prosequi vel attemptari facere præsumat, quod in nostri contemptu vel præjudicio aut populi nostri dampn. cedere valeat, nec aliquem

Writ of Trespass.

aliquem aut aliquos ibid. mittet ex hac causa, quovis modo compellas. Et si hoc coram te fac. recusaverit, tunc ipsum A. B. prox. gaol. nostræ committas, in ead. salvo custodiend. quousque hoc gratis fac. voluerit. Et cum Securitat. ill. sic ceperis, nos inde in Cancellar. nostra sub sigillo tuo distinge & aperte sine dilatione redd. certiores, vel certifies indilate, hoc Breve nobis remittens. Teste, &c.

And this Writ may be directed unto Justices of the Peace or unto the Sheriff, or unto both ; and the form may be as the Writ of *Supplicavit*, which is directed unto the Justices of the Peace and unto the Sheriff, to cause him to find Sureties, &c.

And every one upon a Surmise made unto the Chancellor F may sue forth this Writ for the King; and then the party against whom it is sued may come into the Chancery, and obtain Licence by Letters Patents, or by Letters under the Privy Seal or Privy Signet : and the Licences are good although they be not under the Great Seal, because those Letters will excuse his contempt. And such Licences are called Pass-ports. And now by the Statute of 5 R. 2. c. 2. it is ordained. That no person pass out of the Realm without the Kings leave but those who are excepted in the Statute, and therefore see the Statute.

Writ of Trespass.

THere are two manners of Writs of Trespass. One is of a Trespass which is Vicountiel, and is directed unto the Sheriff, and is not returnable, but shall be determined in the County before the Sheriff; and in this Writ he shall not say *Quare vi et armis, &c.* but the form of the Writ is such:

[86.] *Rex Vic. Linc. salut. Questus est nobis W. de B. quod C. in ipsum W. apud N. insultum fecit, et ipsum verberavit, vulneravit, et male tractavit, et alia enormia ei intulit, ad dampnum ipsius W. non modicum & gravamen ; & ideo tibi præcipimus, quod Loquel. illam audias, & postea inde juste deduci facias, ne amplius clamorem inde audiamus pro defectu justitiæ. Teste, &c.*

And by this Writ the Sheriff shall hear and determine that Trespass, &c. by Inquest according to the Common Law ; and this Writ is in effect a Commission unto him, and he may declare upon this Writ unto his damage of 20 l. or more.

And another form of Writ for Goods is such ;

Rex Vic. &c. Questi sunt nobis W. & B. Executores Testamenti C. ad

C. quod E. & F. bona & catalla quæ fuer. ipsius C. ad valenc. &c. sub custodia ipsor. Executor. apud N. inventa, ceper. & asportaver. & alia enormia eis intuler. in retardac. Execut. Testamenti præd. Et ideo, &c. ne amplius, &c.

B And a man may sue other Writs of Trespass upon the Case in the County before the Sheriff; and the forms of the Writs are such :

Rex Vic. &c. Questus est nobis A. quod cum B. centum oves suas præd. A. super terr. & pastur. suam apud N. per unum annum moratur. vel custodiend. sub certis conditionibus liberaret, præd. B. oves illas ibid. super terram ipsius A. existentes sine licentia & voluntate ejusd. A. infra termin. præd. cepit & abduxit, & alia, &c. ad dampnum, &c. By which Writ it appeareth, that he cannot take back the Cattel again, if the Plaintiff perform the Conditions.

C If a man borrow a certain sum of Money, and doth pawn Goods for the same, and he offereth the Money again unto the party, and prayeth that the Pawn man be delivered back to him, and the other refuse to do it : he shall have an Action of Trespass upon the Case in the County before the Sheriff, to determine the matter, &c.

D If a man doth deliver unto another a Bull, or Oxen, or Cows, to make his benefit of them for a certain time upon condition ; if he against the will of him to whom they were delivered take them back again within the time, he shall have an Action of Trespass against him, directed unto the Sheriff, to determine that Cause.

E If a man do distrain Kine which are with Calf, and impound them against Law for so long time that they cast their Calves, then he shall have a special Writ directed unto the Sheriff, rehearsing the special matter, to end the same before the Sheriff in the County.

F And so if a man have a Salt-pit by the Sea-coasts, and another erecteth a Wall betwixt the Sea and the Salt-pit, if the other person throws down the Wall, by which the Sea-water over-floweth the Salt-pit, he shall have a special Writ directed unto the Sheriff, to end the matter in the County.

G And so for every manner of Trespass done, a man may chuse to have such a Writ directed unto the Sheriff, to end the matter before him in the County, or to sue a Writ unto the Sheriff, returnable in the Common Pleas or the Kings Bench.

H And if the Writ of Trespass be returnable, then the Writ shall be of another form, for then these words *Vi et armis* shall be in the Writ ; and if it want those words, the Writ shall

shall abate, if they be not Writs of Trespass upon the Case; which Writs of Trespass shall not have these words *Quare vi & armis* in the Writ, although they are returnable in the Common Pleas or Kings Bench; and if they have the words *Quare vi & armis* in the Writs, it shall be good cause to abate the Writs. And the form of a Writ returnable in the Kings Bench is such:

Rex Vic' &c. Si A. fecerit, &c. tunc pone per vad. & saluos pleg. I B. quod sit coram nobis in Officis S. Mich', ubicunque fuerimus tunc in Angl'. And if it be returnable in the Common Pleas, then thus: Coram Justic. nostris apud Westm in Officis S. Mich', offens. quare vi & armis in ipsum A. apud N. insult' fecit, & ipsum verberavit, vulneravit, & male tractavit, ita quod de vita ejus desperabatur, & alia enormia ei intulit, ad grave dampnum ipsius A. & contra pacem nostram, Et habeas ibi nomina pleg' & hoc Breve Teste, &c.

And if a man do imprison another, then the form of the Writ of Trespass is: *Ostend. quare vi & armis in ipsum A. apud N. insult. fecit, & ipsum vulneravit, imprisonavit, & male tractavit, & alia. &c.*

And it is not material whether he be wounded or not, for the form of the Writ is such: but the Damages shall be increased for the same, if he do recover. And if he do imprison him until he pay a Fine for his deliverance, then the form is; *Quare vi & armis ipsum A. apud N. cepit imprisonavit, & male tractavit, & ipsum in prisona ibid', quousque Finem per tantum pro deliberatione sua habend' cum pref. B fecisset, ditinuit, & alia enormia ei intulit, &c.*

2 H. 4. 13.

7 E. 6. Dy. 70

20 E. 3. 38.

per Thorpe.

And a man may have one Writ of Trespass for divers Trespasses, &c. as for breaking of his Close, cutting of his Trees, fishing in his Ponds, beating of his Servants, and taking of his Goods and Chattels, and all in one Writ; and for cutting of his Wood, and for taking his young Hawks; and the form of the Writ is: *Quare vi & armis boscum ipsius A. apud N. intravit, & tres pullos Espervorum suorum, pretii tanti, nuper in eod. bosco nidificantium cepit & asportavit, & alia enormia, &c.*

And by this Writ it appeareth that the property of the Hawks are in him who hath the Land by the word [*suorum*] in the Writ.

[87]

And for hunting in a Warren the form is; *Quare, &c. Warrenam ipsius A. apud N. intravit, & in ea sine licentia & voluntate sua fugavit, & Lepores, Cuniculos, Phasianos, & Perdices cepit & asportavit, &c.*

And

A And if a man hunt and take another mans Conies in his Close which is no Warren, then the form of the Writ is : *Quare, &c. Clausum ipsius A. apud N. fregit, & in eo sine licentia & voluntate, &c. fug, & tot Cunicul. pretii tanti cepit & asportavit, &c.*

And by this Writ it appeareth that he who hath the Land hath no property in the Conies. And so of a Park : *Quare, &c. Parcū ipsius A. apud N. fregit, & in eo, &c. fugavit, & feras cepit & asportavit ;* Or thus, *Quare, &c. Herbam ipsius A. apud N. nuper cresc, vel Blada ipsius A. a ud N. nuper crescentia, ad valentiam decem librar, cum quibusdam Aueris depastus fuit, conculcavit, & consumpsit, & alia, &c.* And he need not say in the Writ, *Quare, &c. Clausum fregit, &c & Herbam, &c.*

B And there is another form of Writ of Trespafs, *De solo foffo et carbomb. maritimis asportatis.* And another form of Writ in the Register, *De equo & catall. arrestatis sine causa, quousque Finem fecerit.*

D And another form, *De domo fracta & maremio asportat.*

E And the Writ of Trespafs for Executors for Goods taken out of their possession, which is such :

Rex, &c. Si A. & B Executores Testamenti C. fecerint, &c. tunc pone, &c. quare quatuor Boves qui fuer. ipsius C. pretii centum solid, sub custodia ipsorum Execut. apud N. inventos cepit & abduxit, & Blada quæ fuer. præi C. ibid. crescentia messuit, & Blada illa ac alia bona & catall quæ fuer. ejusd. C. sub custodia eorund. Executor. ib inventa cepit & asportavit & alia enormia eis intulit, in retardationem executionis Testament. præd. & cont. pacem nostram.

F And if an Abbot and his Monks break the Seal of any Writing which they have made to another person, the party shall have a Writ of Trespafs against them in such form :

Rex, &c. Si A. fecerit. tunc pone Abbatem de C. & I & D. Commonachos ejusd. Abbatis, &c. quare, &c. quoddam Scriptum ipsius A communi Sigill. præd. Domus signat, per quod idem Abbas & Conventus ejusd. loci tenebant. præf. A. in victu & vestitu & omnibus necessariis suis sibi inventend, quousq; idem Abbas et Conventus eandem A. alicui viro viginti libratas terræ vel redd. habenti maritarer apud L. invener. malic fruger; et alia, &c.

G And also a man may have a Writ of Trespafs for fishing in his several Piscary, and for cutting of his grass, and for plowing of his Land, or for sheering of his Sheep, and all in one Writ.

And another form of Writ for moving of his Corn, and cutting of his Grass, and felling of his Woods, and eating of his Corn and Pastures; and all in one Writ.

S And

Writ of Trespafs.

And also another Writ of Trespafs made unto a Woman H before Coverture, which is such :

Si A. & B, uxor ejus fecerint, &c. tunc pono, &c. quare, &c. quoddam Forcerium ipsius B. apud N. invent. fregit, & quoddam Script. obligatorium in eodem Forcerio inventum cepit & asportavit, &c. & alia, &c. ad grave damnum ipsor. A. & B. & contra pacem nostram.

And another Writ in the Register, *De Navi abducta, & I catall. asportat.*

And another Writ, *De Bladis & graminibus vinearum depast.*, &c. And another Writ, *De Bladis & graminibus bosci cedui depastis, &c.*

And another Writ, *De Stagno fracto*, thus : *Quare, &c. L. quoddam Stagnum apud R. malitiose fregit, per quod aqua ab eod. Stagno decurrens Vivarium ipsius A. ibid. in tantum inundavit quod per cursum aquæ illius & inundation' præd. piscis in eod. Vivar. tunc ex stens ad valenc cent marc' exivit ; et alia, &c.*

By which it appeareth, that he shall have a Writ of Trespas *vi & armis*, because he causeth the water to run out of his Pond, by which the Fish there go away.

And there is another Writ *De equis abductis*, and goods M and Chattels unto the value of 5 l. and 100 s. of Money in Money told, *ibidem invent' cepit, &c.*

And there is another Writ of Trespafs against those who N lie near the Plaintiffs house, and will not suffer his Servants to go into the house, nor the Servants who are in the house to come out thereof ; and for taking and impounding his Cattel, and not suffering him to sue a Replevin, &c. And the form of the Writ is such :

[88] *Rex, &c. Si, &c. pone, &c. quare vi & armis Mansion. ipsius A. apud H. obseder. & homines & servientes suos extra Mansion. prædictam existentes, eandem Mansionem ad servic. & commodum ipsius A. inibi. faciend. ingredi, ac quosd' alios homines & servient. suos inibi existentes, Mansion. prædictam ad terram ejusdem A. ibidem excolend. exire, non permiser', per quod cent. acr. terre ipsius A. incultæ remanser', & idem A. profic. terr. suæ prædictæ ad valentiam viginti librarum, & servic. suum eorundem hominum et servient. per magnum tempus amisit ; necnon Averia ipsius A. ibidem imparcaver. et ea ibidem imparcata detinuerunt, non permittentes ea eidem A. secundum Legem et consuetudinem Regni nostri replegiari ; et alia enormia ei intulerunt, &c.*

And there is another Writ of an House broke, and Prisoner taken away thus :

Quare vi & armis domum ipsius A. apud N. in qua idem A. quend.

quend. H. de C. Scotum, per ipsum in guerr. caps, tanquam priso-
nar. suam; quousque sibi de centum libris, per quas idem H. re-
demptionem suam cum prefato A. pro vita sua salvand. fecerat,
satisfactum foret, detinuit, freger, & ipsum H. ceper. & abduxer
& alia enormia, &c.

B And note that the form of the Writ for a live thing, as
Horses, or Men, or such like, is to say, *ceperunt & abduxerunt*; ^{2 & 3 P. 8c}
and for a dead thing, to say, *ceperunt & asportaver*, &c. ^{Ma. Dyer 121.}

C And there is another Writ of Trespass; if a man take
another and imprison him untill he make Oath that he will
not trouble nor imprison him for a Trespass done to him
before, or imprison him untill he hath made unto him a
Release of all Actions.

D And if a man taketh his Villain and puts him into the
Stocks, and others come and break the Stocks, and let him
out, he shall have an Action of Trespass, and the Form is:

*Quare cum idem R. S. nativum & fugitivum suum, in Mane-
rio suo apud K. pro eo quod idem R. non fuit justificabilis, cepisset,
& ipsum ibidem in cippis ad castigand, prout sibi bene licuit, posu-
isset, prædict. &c. præd. cippos vi & armis freger, & ipsum S.
ceper. & abduxer. &c.*

E There is another form of Writ thus: *Quare vi & armis,
&c. quodd. Fossatum in L. terris & finis in tantum implevit,
quod aqua de Fossata prædict' exiens Elad. ipsius W. in garbis in
horreo suo ibidem existent. superundavit, per quod Blada præd.
ad valentiam C. s. putrefacta fuer, & Arbor. suas ibid. nuper cres-
cen. ad valentiam xl s. radicitus evulser. & asportaver, & Bla-
da sua ibidem nuper crescen. ad valenc. xl s. cum quibusdam A-
v.riis suis depasti fuer, conculcaver. et consumpser, &c.*

And by the first of these Writs appeareth that that is an
Action of Trespass upon the Case, and the residue a common
Action of Trespass.

F And if a man draw Wine out of the Vessels, and put
Water in the same to fill them up again, he shall have an
Action of Trespass in this form:

*Quare vi & armis, &c. xl. lagenas de quodam dolio Vini ipsius
A. pretii quatuor libr', in navi prædicti I. apud S. positi, abinde
usque S. ducent', extraxit et dolium illud aqua maritima adimplevit,
ita quod residuum Vini præd. putridum devenit, & totalit. deperit;
& alia, &c.*

G And another Writ of the Fish of his Piscary, and Herb
fed up, and Land digged thus:

*Quare vi, &c. in libera Piscar. ipsius A. apud N. piscatus fuit, &
Herbam suam ibid, nuper crescen. falcavit, & in terra sua simili-
ter ibid. fodit, & terram inde project', ac Herbam prædict. &*

Pifcem de Pifcariis prædict. ad valentiam C. s. ceper', &c.

And it appeareth here that there are divers manners of H
forms of fifhing in his Fish-pool. One Writ is, *Quare, &c.*
in Vivariis fuis pifcatus fuit, &c. Another Writ is, *Quare, &c. in*
feper. Pifcar. ipfius A. pifcatus fuit, &c. And the third Writ
is as before, *Quare in libera Pifcar. ipfius A. apud N. pifc. fuit, &c.*

And a man fhall have a Writ of Trespafs for breaking of I
his Houfe, and cutting of his Trees, and for fifhing in his
Ponds, and for taking of his Goods and Chattels, and for
taking of his Plow-Cattel, and impounding of them, and
for taking of his Doves out of his Dovehoufe; and the
form is fuch :

Quare, &c. Domus ipfius A. apud N. fregit, et Arbores fuas ibid.
nuper crefcen. fuccidit, et in Vivariis fuis ibid. pifcatus fu t, et
Pifc. inde ac Arbores prædict', necnon alia bona et Catal. fua, ad
valentiam C. s. ibidem inventa cepit et afportavit, et Averia fua
de caruca fua ibid. cepit et imparcarvit, et ea tamdiu imparcata
detinuit, quod quadraginta acr. terre ejusd. A. permagnum tempus
incultæ remanfer', et Columbas columbar. fui ibidem cum retibus et
aliis ingeniis cepit et afportavit, per quod idem A. volatum Colum-
bar. fui præd. totaliter amifit; et alia &c.

C. s. part

108. in Tref-
pafs the De-
fendant as
to one thing
pleaded not
guilty to a-
nother; and
the Jury
found one if-
fue, and tax-
ed damages xl
entirely. 22.
El. Dy. 369.
2 & 3 Ma.
Dyer 121.
17 E. 3. ac.

And by this Writ it appeareth that a man fhall have an
Action of Trespafs for taking of his Plough-Cattel, and fhall
joyn the fame in a Common Action of Trespafs, with other
Trespaffes; and alfo that he fhall have an Action for ta-
king of his Doves.

And a man may have a Writ *de Claufo fracto, & Bladis in K*
garbis et Fæn. ad valenc. C. s. depaftis, &c. or of eating of his

Hay only, &c. Or, *Quare Arundinem ipfius R. ad valenc. C. s.*
apud N. nuper crefcen. miffuit & afportavit.

Another, *Quare, &c. Lapidem molarem ipfius Prioris pretii L*
s. apud N. fregit; & bona & catalla, &c.

And by this it appeareth, that if it be a live thing or M
dead thing for which the Action is brought, it is not ma-
terial whether he fay *pretii, &c.* or *ad valentiam, &c.*

And another Writ of a Mill-Pool broken in two Towns,
thus :

Quare, &c. Stagnum molendini ipfius R. de B. apud R. et S. fre-
git, per quod aqua de eodem Stagno totaliter exiit, et eidem R.
profcium molendini fui præd. ad valenc. C. s. amifit; et bona et
catalla fua, &c.

And another Writ, *De Domibus & catallis combuftis.* N

And another Writ, *De Ovibus tonfis & Lanis afportatis.* O

And another for taking him and imprifoning him in one P
place, and from thence carrying of him to prifon in another
place, and there detaining him in Prifon. And

A And another Writ for taking of his Sheep in one place, and impounding of them in another place, until he hath paid a Fine.

B And another Writ for breaking of his Sluces in such manner :

Quare, &c. Exclusum stagni molendin. ipsius Abbatis et Parcum suum ibid. apud S. freger' et in eo sine licentia, &c. et Arbor. suas, &c. et in separali Piscaria, &c. et Piscem inde; et Arbor. præd. ad valenc. Cs. necnon Feras de præd. parco ceper.

C Another Writ, *Quare vi et armis, &c. Exclus. ipsius A. ultr. fossatum ac N. pro salvatione terrarum suarum apud C. &c. vi et armis fregit, et maremivi inde ad valenc. Cs. in minutas partes secuit, ita quod per fracturam huiusmodi terræ et prata ejusd. A. ibidem inundat. fuer', et id. A. proficuum terrarum et pratorum præd. ad valenc. Cs. totalit' amisit; et alia, &c.*

E And another Writ : if a man doth imprison his Villain, and set him in the Stocks for some offence, and another man doth set him at large, the Lord shall have an Action of Trespass for breaking up the Stocks, and for setting his Villain at large.

F And another Writ : If a man be riding on the way, and another man striketh his Horse, by which the Rider falleth and is hurt ; he which is cast off his Horse shall have Trespass against the other. Sec 91. k.

G And another Writ for putting out another mans Eye thus : *Quare vi & armis dextr. ocul. ipsius W. a. ud. N. cruit, & alia, &c.*

And the Master of an Hospital shall have an Action of Trespass for taking of Goods in the time of his Predecessor. And the form of the Writ is such : *Rex, &c. Si W. de N. Custos Hospitalis sancti Michael. de C. fecerit, &c. tunc pone, &c. quare vi & armis bona & catall. prædict. Hospitalis, ad val. Cs. tempore I. de C. nuper Custodis Hospital. præd. prædecessoris prædict. Custod', a. ud. R. inventa cepit & asportavit, &c. & alia, &c.*

H And the like Writ for an Abbot or Prior, and in the end of the Writ he shall say, *in deterioration. Domus & Ecclesie ipsius Abbatis* : And so it seemeth it shall be in the end of the Writ for an Hospital.

And another Writ for an Abbot thus : *Quare vi et armis portas et domos Dom. et Eccles. ipsius Abbat. apud L. fregit, et Blada Dom. & Eccles. præd. tempore præd. Abbatis ibidem crescen. ad val. &c. cum quibusd. Avernus depastus fuit, conculcavit et consumpsit, et bona et catalla earund. Dimus et Ecclesie tempore prædict. ad val. Cs. ibidem inventa cepit, &c. et alia, &c.*

Writ of Trespass.

And another Writ for a Trespass done in the time of Vacat^Iion of an Abby or Hospital; *Quare vi & armis bona & catall. Domus & Ecclesiæ ipsius Abbatis de C. tempore Vacationis Abbat. prædict. ad val. C. s. apud L. inventa cepit & asportavit, &c. & alia, &c. in deteriorationem, &c. & cont. pacem, &c.*

And another Writ of Trespass; *Quare vi & armis Warrennam ipsius A. apud C. intravit, & in ea, &c. fugavit; & Boscum suum similiter ibidem intravit, & tres pullos suos Espervorum in eod. bosco nuper nidific. pretii xx s. ac alia bona & catall sua ad val. C. s. ibidem inventa, necnon lepores, cuniculos & perdoes in Warrenna cepit, &c.*

And another Writ of Trespass; *Quare vi & armis centum Ovibus ipsius A. apud T. invent. cum quibusd. canibus fugavit, canes illos ad mordend. Ovibus præd. in tantum incitando, quod per fugationem illam & morsus canum præd. Ovibus præd. multipliciter deteriorata fuer. & magna pars Ovium ill. fetus abortivos fec. & in T. servient. suum ibidem insult. fecit, &c. per quod, &c.*

And another Writ, *De Porcis fugatis ita quod interierunt, &c.*

And if a Man do incite or procure his Dog to bite any Man, he shall have an Action of Trespass for the same.

And if a Man fill a ditch with mud and earth, which had used to be a Water-course, for which another Man's Land is drowned, &c. he shall have a Writ of Trespass, *Quare vi & armis*, and the Writ is such: *Quare vi & armis quodd. Fossatum apud T. per quod quedam aqua decurrit ib. terrâ & fimo in tantum implevit, quod aqua illa de antiquo cursu suo impedita xx. acras terræ ipsius A. ibidem diversis Bladis seminatas inundavit, per quod idem A. proficuum terræ suæ præd. totaliter amisit; & alia enormia, &c.*

And if a Man distrain Cattel, and carrieth them into unknown places, the party shall have an Action of Trespass *Quare vi & armis*, for the distraining of them; and the Writ is such:

Quare vi & armis Averia ipsius A. apud N. cepit, & ea ad loca ignota fugavit, ita quod Averia ill. eidem A. secundum Legem & consuet. Regni nostri replegianda inveniri non potuer. & alia, &c.

There are divers Writs of Trespass founded upon Statutes, whereof some do follow.

Rex, &c. Si A. &c. tunc attach. B. &c. quod sit coram nobis, &c. ad respond. præf. A. quare vi & arm. C. uxor. præf. A. apud N. rapuit, & eam cum bon. & catall. præd. A. ad val. C. marcarum, abduxit, & eam adhuc ei detinet; & alia, &c. ad grave damnum, &c. & contra formam Stat. in huiusmodi casu provisi, &c. Tiste, &c.

Another

P Another Writ : *Quare vi & arm. Averia ipsius A. apud N. in Com. tunc cepit, et ea à Com. illo usque P. in Com. Kanc. fugavit et imparcarvit, et ea ibid. imparcata detinet, cont. Legem et consuet. Regni nostri & cont. pacem nostram. Et habeas ibi, &c.*

A Another Writ of Trespass, that Distresses, &c. be not out of the Fee, or in the King's Way thus : *Si A. fecerit, &c. tunc pone, &c. quod sit &c. coram, &c. ostens. quare cum de communi Concil. regni nostr. provisum sit, quod non liceat alicui Districciones facere ex quacunque causa extra Feod. suum, nec in via Regia aut communi strata, nisi de nobis & ministris nostris specialem auctoritatem ad hoc habentibus, præd. B. qui minist. noster non est, ut dicitur, extra Feod. suum apud N. Averia, ipsius A. contr. form. provisionis præd', &c. Et habeas, &c. Otherwise in the High-way thus : Averia seu bona & catalla ipsius A. in Regia via cepit, & imparcarvit, & ea adhuc imparcata detinet, contra Legem & cons. Regni nostri, &c. et cont. pac' nostram : Or thus : Et Averia præd' diu imparcata detinuit contra Legem, &c. & contr. pacem nostr', &c. Et habeas, &c. Et Averia illa eid. A. interim deliberari fac', Teste, &c.*

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B Another Writ of Trespass against him who distraineth a man by his plough-Cattel, or by his Sheep : *Ostens. quare cum ad communem utilitat. Regni nostri stat. sit, quod nullus de eodem Regn' distringat' per Averia carucar. suarum, vel per Oves, pro debito nostro vel alieno, seu alia quacunque occasione, per Ball. seu minist. nostros aut alior', quamdiu alia habeat Averia per quæ rationabilis Districcio super ipsum fieri possit pro debitis illis levand', exceptis duntaxat Averis illis quæ in damno alicujus inventa secundum Legem & cons. Regni nostri imparcari contigerit ; præd. W. Oves præd. A. apud N. vel Averia ipsius A. de caruca sua apud N. cont. form' Stat' prædict. cepit et imparcarvit, et ea adhuc ibidem imparcata detinet, cont. Legem et cons. &c. et cont. pacem, &c. Et habeas, &c. et Averia illa eidem A. interim deliberari fac'. Teste, &c.*

And so note that in this Writ of Trespass the Sheriff shall make deliverance unto the party, as he shall do upon a Replevin : And if the party hath the Beasts delivered unto him before the Writ sued, then this clause, *Averia illa eidem A. interim deliberari facias*, shall not be in the Writ.

C Another Writ : If a man doth take the Oxen or Carts of another, or other things, as Barges or Ships, to carry goods, against the will of the owner, then he shall have such Writ :

Rex Vic', &c. Si, &c. pone, &c. ostens. quare cum in Stat. dudum apud Westm. edit. int' alias contineatur, quod nullus capiat equos, boves, plaustra, carucas, naves, et batellas ad cariagium fac', contra voluntat. illius cujus res ill' fuer' ; præd. B. & D. vi et armis

Writ of Trespass.

quandam carellam & quatuor equos præd. A. apud N. inventi, contra voluntatem ipsius A. ad cariagium fac' ceper', & per magnum tempus detinuer'; et alia enormia, &c. ad grave damnum, &c. et contra formam Statuti prædicti, et contra pacem nostram. Et habeas ihi, &c.

Executors shall have such Writ of Trespass for goods and chattels taken in the life of the Testator.

And if a man do distrain out of his Fee, he who is distrained shall have an Action of Trespass against him; and in the end of the Writ there shall be this clause, *et Averia illa eidem A. interim deliberari facias, &c.* And by that Writ the Sheriff shall deliver the Cattel to the party, as in a Replevin.

If a man cast any thing upon the feet of another, by which he is hurt, he shall have an Action of Trespass for the same.

If a man take a Canon or Monk out of the Monastery, the Abbot or Prior shall have an Action of Trespass thereupon, thus :

Ostenf. quare quand. domum infra Priorat. de B. quæ est Cella ejusdem Abbatis, in qua Frater I. Canonic. ejusdem Abbatis, pro delicto in quod contra Regulam Ordinis sui incedit, existit, juxta dicti Ordinis regulam castigand', vi & armis fregit, & præf. I. cepit et abduxit; et alia &c. Or thus; Quare, &c. Clausum ipsius Abbatis apud L. fregit, & fratrem W. de L. Canonicum, &c. in Carcerali custodia infra clausum prædict. juxta Regul. Ordinis sui castigand. detentum, ab eadem custod. extraxer. & abduxer'; et alia, &c.

And a man shall have an Action of Trespass for taking his Son and Heir, or his Daughter and Heir, and marrying her. And the Writ is such :

32 H. 4. 18.

Si R. fecerit, &c. tunc pone, &c. W. & B. quod sint, &c. Quare vi, &c. Johann', vel Johann', as the Case is, filium vel filiam et hered. præd' R. apud I. invent. rapuer', maritaverunt et abduxerunt; et alia, &c.

And the King shall have an Action of Trespass for taking of his Goods. And the Writ is such :

Quare vi et armis bon. et catalla nostra ad val', &c. et alia enormia ibidem perpetravit, in nostri contempt' et grave dampnu', &c. et contra pacem nostram.

And for such Trespass done upon the soil and possession of the King, the use is for to have an Information of Intrusion for the King in the Exchequer, and the Def. there to answer it. And when he appeareth in the Exchequer, the course is there to bind him in Recognisance at his peril to leave the possession to the King : and yet it seemeth the King may have an Action of Trespass, *Quare Clausum fregit, &c.*

&c. et Herbas depaſt. fuit, &c. & Arbores succidit, &c.

X And there are other Writs of Trespafs, *Quare Foffata & Sepes ipſius A. frugerunt*, &c.

And another Writ for digging in his Land, and for putting of Lime and Hemp in the Ditches, by which the Water is corrupted; and the Writ is:

Quare, &c. in ſeperali ſolo ipſius A. apud N. fodit, & terram inde projectam in Foffatis ſuis ibidem projecit, et linum et canabum in eiſd. foffat. poſuit, per quod aqua en foff. exiſtens per corruption. lini & canibi præd. adeo defecta devenit, quod Piſcis in eiſd. foffat. exiſtens ad val', &c. interiit; et al', &c.

[98.]

A And another Writ of Trespafs for affaulting a man in his houſe, and lying in wait for him, until he make Oath that he will not bring any Action againſt him, &c. and the Writ is ſuch:

Quare in ipſum I, &c. et ipſum I. in quandam dom', ad quam pro vita ſua ſalvanda ib. fugit, inſecuti fuer', et ipſum inibi per tempus non modicum obſeder', et ipſum ſic obſeſſum quouſq: corpor. præſtit. ſacrament. quod aliquam Action. verſus præf. &c. occaſione tranſgr. præd. ſeu alia occaſione quacunq; non moverit. detinuer', &c.

B And if a Man have waif and Stray within his Mannor by Prescription, and another man takerh the Waif or Stray out of the Mannor, &c. he who hath the Mannor ſhall have an Action of Trespafs for them, &c. and that without any ſeifure of them before.

C And if a man take another man and imprifon him, and compel him to make to him a Statute-Merchant, or a Release, or an Acquittance, he ſhall have an Action of Trespafs for the ſame, and the Writ ſhall recite the matter, and the detaining in priſon of him, *quouſque*, &c.

D If a man have Wreck by Prefcription, or by the King's Grant, &c. if Goods be wrecked upon his Lands, and another take them away, he who hath the Wreck ſhall have an Action of Trespafs, *Quare vi & armis*, for thus taking without ſeifure thereof before; and the Writ is ſuch:

Oſtenſur', quare cum idem Th. Dom. Manerii de Elſton Bavent exiſtat, et ib. habere debeat, ipſeq; et antecellores ſui Dom. Manerii præd. à tempore quo non extat memoria hucufq; habere conſuever', Wreccum maris infra præcinſt. Manerii præd'; præd. Jocus et Robert. bona et catalla ad valenc. C s. apud S. infra præcinſt. ejufd. Maner. ad terr. projecta, quæ ad ipſum Th. tanquam Wrecc. pertin. deberent, vi & armis ceper. & aſportaver', &c. Or thus, decem libr. in pecunia, &c. Or, quare cum per Chartam, &c. habere debeat, &c.

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If a man send his Servant to apprehend his Villain, and to bring him unto him, and the Servant apprehendeth the Villain, and in bringing him unto his Master another rescueth him from the Servant, and lets him go at large; the Master shall have an Action of Trespass for this Rescous, and not the Servant, for the wrong is done unto the Master, &c.

If an Abbot or other man hath a Hundred, and hath all Felons Goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff taketh the Goods of the Felon within the Hundred, he who hath the Hundred, and such liberty, shall have an Action of Trespass against the Sheriff for the Goods which the Sheriff took, and the same shall be, *Quare vi & armis*, &c.

And if an Abbot or other person ought to have Toll in any place, and sendeth his Servant to take the Toll, and another doth disturb his Servant to take the Toll; the Abbot, or he who ought to have the Toll, shall have a general Action of Trespass, *Quare vi & armis* they did assault his Servant, and disturbed him to take the Toll. And the Writ is such:

Quare cum idem Abbas, per Chart. progenito. nostr. præd. quondam regum Angl', habere debeat Theolonium de rebus venalib. ad Villam de S. venient, ib', iidem R. & I. in S. servient. ipsius Abbatis, per ipsum ad hujusm' Theolonium in Villa præd. colligend. deputat', vi & armis insultum fecer', et ipsum quo minus hujusm. Theolonium colligere & percipere potuit impediuer'; et præd. catall. per ipsam S. pro hujusm. Theolonio nomine Districcion' ibid. capta & attachiata eidem S. abstuler', per quod idem Abbas profic. de hujusm. Theolonio proveniens per magnum tempus amisit; & alia &c.

And so if a man ought to have Toll in a Fair, &c. and his Servants are disturbed to gather the same, he shall have the like Action for assault of his Servants, and for the loss of their Service, and for the disturbance made unto them, and for losing the profit of his Toll, and all in one Writ.

Vid. 1. H. 5. 1.
47 H. 3. 22.

And if a man have a Fold in common with two other men, and the one do disturb him to set up his Clays and Pales, and break them, he shall have an Action of Trespass against them in this form, *Quare vi & armis*, thus:

Si Priorissa de T. fecerit, &c. tunc pone. &c. E. &c. ostens. quare dum ead' Priorissa quendam Faldum apud F. simul cum præd. E. ac M. de B. habere debeat, ipsaq; Priorissa et ejus prædecess. hujusm. Faldum cum præf. E. et M. et eor. antecess. à tempore quo non extat memoria, semper hucusque habere consuever'; præd' E. elaias et palos ipsius Priorissa in Falda eorund' Priorissa. E.

&

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et M. apud dictam Villam de F. nuper erect. positos, vi et armis fregit, et ipsam Priorissam quo minus claias et palos in Faldæ præd. prout ad ipsam pertinuit, ponere, vel aliquod commodum de Faldæ illa percipere potuit, impedivit; et alia, &c.

I A man shall have an Action of Trespafs for taking of his Apprentice, or for taking of his Servant.

K And the Churchwardens shall have an Action of Trespafs for taking the Goods of the Church, either in their own time, or in the time of their Predecessors.

L And a man may have an Action of Trespafs for breaking of his Houfe or Close, and alledge a continuance of the Trespafs, and of the breaking thereof, from such a day unto such a day; as well as he may have for treading of his Grasse or cutting of his Corn, &c.

M The Ordinary shall have an Action of Trespafs for those Goods which he hath to administer as Ordinary; where a man dieth Intestate, and the Goods are taken out of his possession, he shall have an Action of Trespafs for the taking thereof. But he shall not have an Action of Trespafs for Goods taken out of the possession of him that died Intestate, but the Administrators shall have such Action; for the Ordinary shall not have an Action for Goods or Debts of him that died intestate, but only an Action of Trespafs for the Goods taken out of his own possession. And the Process in this Writ of Trespafs is Attachment and *Distringas*; and if the Sheriff do at the Attachments or *Distringas* return *Nihil*, then he shall have a *Capias*; and *Alias*, and *Pluries*, and Exigent, and so Process of Utlagary against him.

[92.]

A If the King granteth a Protection unto a man, by which Protection he taketh him, his Lands and Goods into his Protection as the common course and form of Protections are; now if another man do afterwards take his Goods, or doth enter into any of his Lands or Tenements during the time that the Protection is in force, he shall have a special Action of Trespafs against him in this form:

Ostenf. quare cum nuper suscepimus in protect. et defension. nostram W. homines, terras, res, reddit', et omnes possessiones suas, omnib' et singulis inhibent' ne quis injuriam, molestiam, damnum inferret seu gravamen; id. B. bona et catal. præd W. dum sub protect. nostra fuit, apud N. invent', ad valent. cent. librar', vi et arm.' cepit et asportavit, et homines, &c. per quod, &c. et alia. &c. ad grave dampnum ipsius W. et cont. pacem nostr. Et habeas tibi nomina Pleg', et hoc breve. Teste, &c.

B And also he who hath the King's Protection, if any man take his Goods, or enter into his Lands, &c. or beat his Servants,

Writ de Trespass sur le Case.

vants, &c. he shall have a special Writ unto the Sheriff for to enquire of them, and to certifie the same before the King, &c. and it seemeth the King shall make Process against them by *Veni e facias*, as upon an Indictment, and that thereupon they shall be fined, and the Writ is such :

Rex Vic. Linc. salut'. Præcipim. tibi, quod per sacrament. probor. & legal. homin. de Com. tuo per quos, &c. diligent. inquiras, qui malefactor et pacis nostr. perturbator. bona & catal. A. ad valentiam cent. librar', apud N. inventa quem suscepim. in defension. nostr' special', homines, res, redditus. & omnes poss. suas, omnib' & singul. inhibentes, ne quis eis injuriam, molestiam, damnum inferret seu gravamen, vi & arm ceper' & asportaver', & in homines suos ibid. existentes, insultum fecer', & ipsos verberaverunt, &c. et alia ; &c. ad grave damnum ipsius A. et contra protect. nostram præd'. & contra pacem nostram : Et Inquisition. inde disint. & aperte factam nobis, sub sigillo tuo & sigillis eor. per quos facta fuerit, sine dilatione mittas, & hoc Breve.

But note that there is a Statute made *An. 28 E. 3. cap. 6.* that willeth, that no Commission or Writ shall be from thenceforth granted unto the Sheriff, to enquire, &c. But if such Writ or Commission be granted, &c. *Quare* if it be good : it seemeth not, for this Statute is made only to bind the King that he shall not grant, &c.

There is another Writ *De Fano in Prato prostrat, & depasto ; D* and another Writ *De Clauso Ostio, & Fenestris fractis, &c.*

Writ de Trespass sur le Case.

THere is another form of Writ of Trespass upon the Case which is to be sued in the Common Pleas or King's Bench ; and in that Writ he shall not say *Vi & armis*, &c. but in the end of the Writ he shall say *contra pacem*, and the form is such :

Rex Vic', &c. Si Matilda de D. &c. tunc pone, &c. quod sit, &c. ad respond. tam nobis quam Matildæ, quare cum ead. Matilda nuper quoddam Breve nostrum de Prohibitione versus præf. I. ne ipse Placitum in Cur. Christianitatis de catallis & de debitis quæ non de Testamento vel Matrimonio sequeretur, in Cur. nostra impetrasset, eademque Matilda dictum Breve nostrum præf. I. apud C. liberasset ; idem I. recepto dicto Breve nostro, illud ibid. in luto projecit, et pedibus suis conculcavit, necnon Placitum præd' sequutus est in ead. Curia Christianitatis, in nostri contempt', et ipsius Matildæ grave damnum, ac contra pacem nostram. Et habeas, &c.

Note well
this Writ,
that it lieth
for casting a
Writ into
the dirt.
Crompton
133. 4c.

Another

F Another Writ; *Quare in aqua de Plim. per quam inter Humber & Gaunt navium & battellorum communis est transitus, & transverso aque pilos defixit, per quod quedam navis cum triginta quarteriis brasii ipsius W. submersa fuit, et viginti quarteria brasii C. s. deperierunt; et alia enormia, &c.*

G And if the Lessor do oust the Executors of the Lessee of their Term, they shall have a special Action of the Cafe against the Lessor, and the Writ shall be by Summons, &c. and not by *Pone per vadios & saluos pleg'*, as the other Writ of Trespafs is; and the form is such:

Si Johan, Executrix Testam. E. de C. fecerit te, &c. tunc sum', &c. P. & M. ostens. &c. quare cum iidem P. & M. unum molendinum & sex acras terre cum pertin. in N. pref. E. de C. ad terminum qui nondum preterit dimisissent, & idem E. de C. in Testamento suo pred. molendinum & terr', usque ad finem termini pred', pred. Executrici, ad executionem Testam. pred. inde faciend'. legasset; pred. P. & M. post mortem ipsius E. de C. pred. molend. & terras (durante termino pred') ingressi, ea pred' Executrici detinent minus iuste, in retardation. execut. Testam. predict', ut d'c'. Et habeas, &c.

And if the Sheriff doth arrest a man upon a *Capias* directed unto him sued forth upon a Statute-Merchant, and afterwards set him at liberty, he who sued the Writ shall have a special Action upon the Cafe against the Sheriff, which is such:

[93.]

A *Rex Coronatoribus salut'. Si A. fecerit, &c. tunc pon', &c. Vic. nostrum Suff. quod sit, &c. ostens. quare R. mercatorem, nuper per Breve nostr. eid. Vic. direct', pretextu ejusd. Recognitionis centum marcarum eid. A. per pref. R. juxta form Statuti. apud Acton Burnel nuper editi fact', capt. & custod. ejusd. Vic. apud O. exisset, pref. A. de pred. centum marcis minime satisfactio, contra voluntatem ipsius A. libere abire permisit, ad grave damnum ipsius A. & in retardation. execution. Recognitionis predict', ut dicitur. Et habeatis, &c.*

And if the Sheriff in a Writ of Account or Debt return upon any, *quod non est inventus, nec habet terras, &c. per qu. distringi poterit, &c.* for which a *Capias* is awarded against him, and he is arrested thereupon, where he hath sufficient Lands, or Goods and Chattels; then he shall have an Action upon the Cafe against the Sheriff, directed unto the Coroners, as before is said, &c.

14 H. 7. 10.

22 E. 4. 1.

& 2.

34 H. 6. 6.

21 H. 7. 32.

36 H. 6. 3.

And so another Writ; If the Sheriff hath a Prisoner committed unto him for debt, &c. and afterwards he suffer him to go at liberty before the Debt be satisfied, &c. he shall have an Action upon the Cafe against the Sheriff; and

yet

Writ de Trespass sur le Case.

yet it seems he may have an Action of Debt against the Sheriff.

If a man be indicted of Felony before any Justice, and D one T. as one of the four men of the Town, and *Reserve*, give the Evidence as Indictors, &c. and afterwards he who is indicted is acquitted, &c. and afterwards the Bailly of the Hundred or other Officer shewed unto T. that he who is acquitted hath a Writ of Conspiracy against him, and that he hath a *Capias* to arrest him, by which he is arrested and imprisoned until he pay six marks for a Fine for his deliverance, &c. he shall have an Action of Trespass upon his Case: But it seemeth he may have a general Action of Trespass in that case upon False imprisonment, if he have not any Writ directed unto him.

If a Replevin be removed out of the Liberty by *Pone* into the Common Pleas, and afterwards (pendant the Plea there) the Bailly of the liberty doth award a Return in the Liberty to the Defendant, for which he taketh the Cattel and impoundeth them, by means whereof some of them die for want of Food; the party grieved shall have an Action upon the Case against the Bailly of the Liberty who awarded that Return to hold Plea after the matter removed in the Common Pleas.

If a man doth attach another or his Goods for Debt, &c. in a Liberty, and after the Bailly, by Covin betwixt him and the Defendant to discontinue the Plea, deliver the Goods attached to the Defendant, the Plaintiff shall have an Action upon the Case against the Bailly, and the Writ is such:

Si A. fecerit, &c. tunc sum' I. Ballivum magnæ Cur. sive Mercati de N. quod sit, &c. ostens. quare cum idem Ball. ad Querimoniam præd. A. B. per quædam catall. sua, ad respondend' præf. A. in Cur. prædict' secundum Legem mercatoriam, prout moris est in regno nostro Angl', de debito decem librarum, quod idem A. de præf. B. exigit, attachiasset, ac in Loquela prædict' in eadem Cur. inter partes prædict', quod se in Inquisitionem inde posuer', in tantum processum fuisset; prædict' Ballivus pendente coram eo Inquisitione prædict', per Collus. inter ipsum et præfatum B. habitam in Cur. prædict', malitiose recessit, & Inquisitionem prædict' capere recusavit, per quod Placitum præd. exitis discontinuat; idemque Ballivus catalla prædict' eidem B. præf. A. de debito præd. non satisfact', postmodum liberauit, ad damnum ipsius A. viginti librarum, ut dicitur, &c.

And a man shall have an Action of Trespass upon the Case against his Neighbour who hath Lands betwixt him and the Sea, and ought to make Banks; and cleanse certain Ditches

Ditches and Sewers betwixt him and the Sea, and he doth not cleanse them as he ought to do, by reason whereof his Land is surrounded, &c. he shall have his Action upon the Case against him for not mending the Banks, and cleansing the Ditches and Sewers, &c.

H If a man be committed unto the Goal for Debt or arrears of Account, and the Goaler of malice lay so many Irons upon him, or set him in the Stocks, or keepeth his Victuals from him, by reason whereof he is so spent, that he becomes lame, or hath other infirmity: he shall have an Action upon the Case against the Goaler.

If a man doth distrain any Priors, or other Prelates Horse, whereupon he is riding in his journey, for or upon any Contract, Debt, or Trespass done by him or his Predecessor, when he might have distrained or attached him by other Goods or Chattels of the said Prior or Prelate, then he shall have an Action upon the Case, which is such:

Vid. Br.
Attachment
23. but if he
hath not o-
ther Goods
then he may
attach these
Goods,

I Si A. Prior, &c. pone B. &c. ostens. quare cum non liceat alicui Prelatum, Magnatem, seu aliquam personam Ecclesiasticam regni nostri, per idem Regnum alicubi transeuntem, occasione alicujus Contractus seu debiti per equitatum suum proprium distringere, cum alia Averia seu catalla ibidem habeat, per quæ rationalis Districcio super ipsum fieri valeat; præd. B. præf. Priorem per Villam de C. transeunt occasione cujusdam Contractus inter S. quondam Priorem de, &c. Prædecessorem Præd. Prioris, & præd. B. dudum, ut dicitur, per quendam Equum palfridum suum, quanquam per alia Averia & catalla tunc ibid. rationabilem Districcionem super ipsum fac. potuisset, distrinxit, & palfridum illum diu malitiose detinuit, per quod negotia sua ardua, pro quibus transitum suum præd. fecerat, perierunt; & alia, &c.

[94]

And if a man promise and take upon him to make for another man certain Carts for Carriages, or other thing, and taketh money before hand for to do the same, and afterwards he doth not make them according to the promise and undertaking; the other may have an Action upon the Case against him and the Writ shall be such:

Si W. &c. tunc pone I. &c. ostens. quare cum idem I. tres currus provictualibus & heruestis ipsius W. ad partes transmarinas ducend. pro certa pecunie summa, cujus unam part. præ manibus recepit, infra cert. termin. inter eos concord. facere & fabricare apud S. assumpsisset: idem I. currus præd. infra terminum præd. facere & fabricare non curavit, per quod idem W. diversa bina & catalla sua ad valenciæ C. marc. quæ in curribus præd. duci

Writ de Trespafs sur le Cafe.

duci debuissent, pro defectu cur. præd', totaliter amisit ad grave dampnum ipsius W. ut dicitur : Et habeas, &c.

And if a man be lodged in any Inn, and any of his Goods be taken or stolen from thence by a stranger, he shall have an Action upon the Cafe against the Inn-keeper, and the Writ shall be such :

Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. quod sit, &c. ostens. &c. quare cum secundum Legem et cons. regni nostri Angl. hospitatores, qui hospitia communia tenent, ad hospitand. homines per partes ubi hujusmodi hospitia existunt transeuntes, et in eisdem hospitantes, eorumque bona infra hospitia illa existentia, absque subtractione custodire die ac nocte tenentur, ita quod pro defectu ipsorum hospitatorum seu servientium suorum hospitibus hujusmodi dampnum non eveniat ullo modo : quidam malefactores quendam equum ipsius A. pretii xls. infra hospitium ejusd. B. apud S. hospitati, inventum pro defectu ipsius B. ceper. et abdux', et alia enormia, &c. ad grave dampnum, &c. Et habeas, &c. Teste, &c.

9 H. 6. Acti-
on sur le
Cafe 15.

If a man do sell unto another man a Horse, and warrant him to be sound and good, &c. if the Horse be lame or diseased, that he cannot work, he shall have an Action upon the Cafe against him.

And so if a man bargain and sell unto another certain Pipes of Wine, and warrants them to be good, &c. and they are corrupted, he shall have an Action upon the Cafe against him.

But note, it behoveth that he warrant it to be good, and the Horse to be sound, otherwise the Action will not lie. For if he sell the Wine, or Horse without such warranty, it is at the others peril, and his eyes, and his taste ought to be his judges in that Cafe.

But if a Smith prick my Horse with a nail, &c. I shall have my Action upon the Cafe against him, without any warranty by the Smith to do it well. And the Writ shall be, *Quare quendam clavum in unum pedem cujusdam equi J. a ud N. fixit. per quod putridus devenit, sic quod idem equus per magnum tempus laborare non potuit, et idem J. profic. equi sui præd' per idem tempus amisit, ad dampn', &c.* For it is the duty of every Artificer to exercise his art right, &c. truly as he ought.

And if any Sheriff or under-Sheriff do distrain any Parsons or Vicars, or other Spiritual persons, in any Lands whereof they are possessed in the right of their Churches, they shall have actions upon the Cafe against the Sheriff in this form :

Rex

Rex, &c. Si A. persona Ecclesiæ de C. fecerit, &c. tunc pone, &c. B. Vic. nostrum Somers. & C. Subvic. nostrum ejusdem Com. quod sint, &c. ostens. quare cum in articulis cleri regni nostri per dominum E. nuper Regis Angl. progenitor. nostrum concessis inter alia continetur, ne ministri nostri, ut Vic. aut alii cap. animalia rector. Ecclesiarum pro distractionibus aliquibus in via Regina, nec in feod. in quibus Ecclesiæ ill. olim fuer. dotata; præd. Vic. & Subvic. auferant præd. A. apud L. in feodo ipsius A. Ecclesiæ suæ præd. de quo eadem Ecclesiæ olim dotata fuit ceper. & ea abinde usque S. duxerunt, & imparcaverunt, & ea imparcata ibidem diu detinuer. contra legem, & consuet. regni nostri, & contra form. articulorum prædict. & contra pacem nostram. Et habeas, &c.

F If a Man ought to be quit of Toll for himself and his Tenants and Men; in every Market or Fair, &c. Now if any Officer or Bailiff take Toll of him his Tenants or Men, he of whom the Toll is taken shall have an Action of Trespass upon the Case against him who took the Toll, or distrained his Goods for the Toll. And also he may have a Writ out of the Chancery directed unto the Bailiffs or such Officers, that they suffer them to be quit of Toll, &c. and he may have an *Alias* and a *Pluries*, and Attachment thereupon against the Bailiffs or Officers, if they do not obey such Writs, and the *Pluries* shall be returned into the Common Pleas or King's Bench.

If a Man hath a Mannor within any Honour, and by presumption hath had view of frankpledge of his Tenants within his Manor, &c. Now if he or his Tenants be distrained by the Lord of the Honor, to come unto the Leet of the Honor, and to present there those things which ought to be presented within the view of frankpledge within the Manor. He who is so distrained may have a general Action of Trespass for this Distress, or he may have a special Writ directed unto the Bailiffs or Officers of the Honor reciting the whole matter, commanding them that they suffer the Lord of the Manor to have and to hold his Leet of his Demesne, &c. as he hath used to do; and that they do not distrain him or his Tenants in any wise to come unto the Leet of the Honor, to present any thing which ought for to be presented in the Leet of the Manor; and also comprehending in the same Writ, that if they have taken any distress for that cause that he then redeliver them, &c. And upon that he may have an *Alias* and *Pluries*, and Attachment against them if they do not obey the aforesaid Writs.

[93]

T

And

Writ of Trespass upon the Case.

And also if a man hath used to have a gulf of water in A any water, and it hath been used that no other should make a gulf in the same water between his gulf and the gulf of B. now if another doth make another gulf betwixt them, he shall have his Action upon the Case in this manner. Si A. persona Ecclesie de C. fecerit, &c. R. de T. &c. quare cum idem A. habere debeat, ipseque & predecess. sui person. Eccl. præd. à tempore quo non extat memor. semper hætenus haber. cons. quend. gurgit. in aqua de W. in B. ita quod in ead. aqua inter gurgit. ipsius A. & gurgit. S. de E. domini Man. de H. nullus aliquem gurgitem levare, palos seu claias figer. aut retia aliqua pro pisce inibi cap. ponere debeat, seu cons. aliquibus temporibus retroactis: idem R. clais & palos int. gurgit. præd. A. & S. in ead. aqua fixit, & retia pro pisce inibi capiend. posuit & ibidem piscatus fuit & piscem inde cepit & asport. per quod idem A. profic. gurgitis præd. ad valenc. C. s. amisti, & al', &c. Et habeas, &c.

And if a man hath a liberty to return Writs, and to execute them, if the Sheriff *ex officio* enter into the Liberty, and execute any Process there; the Lord of the Liberty shall have an Action upon the Case against him; and these Writs do appear in the Register.

If a man be found in Arrearages before Auditors, for which the Auditors do commit him to the Gaol, and afterwards he escape from thence, now the Gaoler ought to pay the Money which was arrear upon the Accompt. And the Gaoler shall have his Action upon the Case against him who escaped to answer unto the King for the Escape: and to the Gaoler for the damages which he hath sustained; the Form of the Writ is such:

Rex Vic. &c. Ex gravi querela A. accepimus. quod cum B. compotum suum de tempore quo fuit Ballivus C. in N. eidem C. infra libertat. de K. nuper reddiderit. Et idem B. pro arrearagiis compoti illius per auditores ejusdem compoti postmodum arrestatus, & prædict. A. custod. gaol. nostræ libertat. præd. liberatus fuit, in eadem gaola custodiend. quousque præd. C. de arrearagiis prædictis juxta formam statuti de hujusmodi receptoribus & ballivis provisi plene satisfaceret, prædictus B. ac custodia prædict. A. prædicto C. de arrearagiis prædict. non satisfacto, contra pacem nostr. evasis, occasione cujus evasion. idem A. præfato C. de arrearagiis illis juxta formam statuti prædicti plene satisfecerit, in ipsius A. damnum non modicum & gravamen. Et quia transgr. illam si talit. perpetrata fuerit, relinquere nolumus impunitam, Tibi præcipimus, quod si prædict. A. fecerit te secur. tunc prædict. B. per corpus suum attachias, ita quod cum habeas coram nobis, &c. ad respondend. nobis de eva-

Writ of Disceit.

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sione prædict. & prædict. A. de damnis quæ sustinuit occasione eva-
sionis illius. Et habeas ibi hoc Breve, &c.

D And if a man play with another at Dice, and he hath
false Dice with which he playeth, and gets the others money
with these false Dice, he who loseth his money may have
his Action upon the Case for this deceit, and the Form of
the Writ is such :

Rex Vic. &c. Si A. fecerit, &c. tunc pone, &c. T. de D &c.
quod sit, &c. ostens. quare cum idem T. de D. machinans ipsum A.
subdole defraudare, & diversas pecuniar. summas de eodem A. ex-
torquer. eund. A. ad ludend. ad talos cum ipso T. ad quendam
jocum vocat. le Dozen, pro divers. pecuniar. summis apud Bur-
ton super Trent, excitasset & procurasset, ac idem A. cum ipso T.
ad talos ad jocum prædict. ibid. lusisset, præd. T. quosdam talos
veracit. titulat eidem A. tradidit ad jactandum, & cum tali
præd. ad manus ipsius T. devenire contigissent, idem T. quosdam
aliis talos falsos & subdole titulos, quos numerum duodenarium,
& non alium quolibet jactu attingere scivisset, falso & frau-
dulent. projecit, per quod idem A. magnas pecuniar. summas ei-
dem T. ad joenum illum amisit, ac idem T. summas illas sub co-
lore lucri falso & deceptivæ cepit & asportavit, ad dampnum ip-
sius A. 5 li. ut dic. & habeas ibi nomina pleg. & hoc Breve. Tesse,
&c. and this Writ was sued Anno 5 E. 4. which see in the Re-
gifter. 240.

And although that the Defendant doth not entice the
Plaintiff for to play, yet if the Defendant play with false
Dice, &c. by which he gets the Plaintiff's money; it seem-
eth the Plaintiff may maintain this Action well enough,
because the enticement is not the cause of the Action, but
the casting of the false Dice, by which he gaineth the
money, &c.

Writ de Disceit.

E THIS Writ lieth properly where one man doth any thing vi-
t in the name of another, by which the other person is
damned and deceived; Then he who is so damned shall
have this Writ, and the Writ is without the words vi &
armis, and the Writ is such :

sued by Attorney 19 H. 6. 50. it shall not abate for Form, if it have
substance,

Rex Vic. Lincoln. salut. Si A. fecer. &c. tunc pone, &c. P. &c.
ad resolvend. tam nobis quam præfat. A. quare quod. Breve ne-
strum per fin. 20 s. ad opus nostrum per breve præd. capiend. nomine
prædict.

26 E. 3. 65. prædict. A. hoc penitus ignorant. fraudulent. & malitiose in Cancellar. nostra impetravit, in deception. Curia nostr. ad grave damnum ipsius A. Et habeas ibi nomina pleg. & hoc Breve, &c.

The King shall have this Writ, if no other will sue it, because it is penal. 19 H. 6. 44. So if a man levy a fine, confess an Action or a Recog. or Statute, or apper as Vouchee in my name.

By which it appeareth, That if a man do purchase a Writ in my name, for which Writ I ought to pay a fine in the Chancery, as the course there is for every Writ of Debt of the sum of 40 l. or more to pay for every Writ 40 l. 6 s. and 8 d. and if it be of 100 marks 6 s. 8 d. And so for every 100 marks 6 s. 8 d. and so for every Writ of Plea of Land, which is *Præcipe quod reddat*, if it be not a Writ of Right Patent, for every Writ which is of the yearly value of 5 marks 6 s. 8 d. &c. and so according to that rate. And then if a man purchase such a Writ in my name, and I know not thereof, I shall have this Writ of Disceit.

19 H. 6. 44.
7 H. 6. 33.

And if I do present one unto a Church whereof I am the Patron unto the Ordinary, and one T. doth disturb me, for which disturbance another doth purchase a *Quare impedit* in my name returnable in the Common Pleas against the said T. I not knowing thereof, and afterwards causeth the Writ to abate, or me to be Nonsuit in that Writ, I shall have this Writ of Disceit against him who purchased that Writ, &c.

19 H. 6. 44.
If a man make an obligation in my name, I shall not have Disceit, because I may plead Non est factum.

If one forge a Statute Merchant in my name, and sueth a *Capias* thereupon, for which I am arrested, I shall have this Writ of Disceit against him that forged it, and against him who sued forth the Writ of *Capias*, &c.

If a Prior or Abbot have Title to present unto a Vicaridge whereof they are Parsons imperfonnee and Clerks secular or Regular at their Wills: And afterwards another doth forge a grant in the name of the Abbot or Prior under their Covent Seal, that they do grant to one of the Parishioners, &c. that they shall present a secular person and not a Regular, as a Canon or such, &c. The Prior or Abbot may have a Writ of Disceit, and the Form shall be such:

Si Prior Bartholomei de suburb. Lond. &c. ponite W. & B. &c. quod sint coram nobis, &c. in octabis sancti Martini ubicunque, &c. ostens. quare quum idem Prior personam secularem vel regularem idoneam ad vicariam sancti Sepulchri extra muros Lond. quam quidem Ecclesiam idem Prior tenet in proprios usus, pro voluntate sua presentare debeat, & hactenus consuevit, prædict. W. & B. collusionem inter eos prælocuta prædict. Prior

rem malitiose pręgravare machinantes, sigillum commune prioratus prædicti contrasacerunt, & quasdam literas patentes, per quas prædecessorem præd. prioris concessisse debuer. idem Prior & Convent. loci præd. personam secular. & non alium ad vicar. illam presentare deberent cum eodem sigillo contrasac'to consignari fec. & literas illas sigillo præd. consignatas in quadam causa ad instantiam ipsius W. tunc Paroch. Eccles. præd. inter ipsum W. & præf. Prior. coram Officiali Cur. Cant. Christianit. super motione frat. R. de P. canonic. præd. Prior. ad presentac. suam ad vicar. præd. per Episc. Lond. admissi mota exhibuere & ipsum Prior. laborem & expensis virtute literarum præd. diversimodo in hac parte fatigari procurar. in ipsius Prioris dispend. non modicum & gravamen. Et habeas ibi nomina plegiorum, & hoc breve, &c.

- D And if a Man be Attorney for another in a Plea real against the Demandant, and afterwards by Covin between the Attorney and the Demandant, the Attorney makes default for which the Land is lost, the Tenant who lost the Land shall have a Writ of Disceit against the Attorney, and the Writ shall be such :

Ostens. quare quum idem A. præf. R. in loquela quę fuit coram eisdem Justic. nostris per breve nostrum, inter K. petent. & præf. tenent. de 20. acris terrę cum pertin. in C. attorn. suum coram nobis fecisset ad lucrandum vel perdend. in loquela præd. præf. B. collusionem inter ipsum & præd. C. habita, se ad quend. diem per præf. Justic. in eadem loquela in banco præd. præfixum gratis absentaverit, per quod idem A. pro defectu ipsius B. terram præd. per considerationem cur. nostrę amisit, in deceptionem ejusdem cur. nostrę, in ipsiusque A. grave damnum, & exheredationis periculum manifestum. Et habeas, &c.

- E And if an Action of Trespass be brought against many, and the Plaintiff and one J. by covin between them cause certain persons to come into Court, and say that they are the same Defendants, and that they make the said J. their Attorney, and afterwards the said J. as Attorney for the Defendants pleadeth unto Issue, and afterwards suffer the enquiry to pass by default, by which the Plaintiff doth recover against the Defendants: Now those who are the true Defendants shall have a Writ of Deceit against J. who appeared as Attorney for them, &c. and the writ appeareth in the register.

And so if R. doth recover in an Assize against W. certain Tenements and Damages, and because W. hath nothing in the same County to levy the Damages, R. removeth the Record of Assize into the King's Bench or common pleas, to sue forth Process thereupon, and to have Execution of the said Damages recovered, for which the said W. to defraud the

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Si A. fecerit, &c. tunc pone B. & C. &c. quod sint coram, &c. ad respondend. tam nobis quam A. quare cum idem A. in Curia nostra coram Justic. nostris de banco implacitasset per breve nostrum prædictos B. & C. de tribus paribus Manerii de S. cum pertin. iidem B. & C. Cur. nostræ ac legi & consuetudini Regi nostri Angliæ manifeste illudend. & prosecutionem prædict. A.

Writ of Disceit.

42

in hac parte prorogat. machinando ad quendam diem partibus prædict. in eadem loquela coram præfatis Justic. præfixum quasdam literas nostras de protectione continent. ipsum C. ad partes transmarinas in obsequio nostro tunc profecturum fuisse, & ipsum sic quietum esse de omnibus placitis & querelis, except. placitis de dote unde nihil habet, & Quare impedit, & ass. novæ disseisinæ, & ultima presentationis, & attinctæ, & exceptis loquelis quas coram Justic. nostris itinerantibus in itineribus suis summoniti contigerit, coram præfatis Justic. porrigi fecerint, ipso C. tunc post & antea in Ang. continue commorante, per quod loquela illa coram præf. Justic. remansit sine die, in nostri contemptum manifestum, & deceptionem Curiae nostræ præd. ac legem & consuetud. præd. illusionem manifestam, necnon ipsius A. dispend. non modicum & exhered. periculum manifestum. Et habeas ibi, &c.

C In a *Præcipe quod reddat*, if the Sheriff return the Tenant summoned where he was not summoned, by which the Defendant loseth his Land by default at the Grand Cape returned, the Tenant shall have a Writ of Disceit against him who recovered, and against the Sheriff for his false return, and by that Writ the Tenant shall be restored unto his Land again. And it seemeth the Tenant shall have this Writ after Judgment given for the Demandant against him that recovered before any entry or possession: For if the Tenant shall not have a Writ of Disceit before the Demandant doth enter, then perhaps the Demandant will not enter, until the Summoners in the *Præcipe quod reddat*, and the Summoners, Viewers and Pernors in the Grand Cape are dead, and then he shall not have a Writ of Disceit after their deaths; For whether he were summoned or not shall be tried by the Summoners and Viewers, and Pernors by examining of them. But see 3 E. 3. That the Tenant shall not have a Writ of Disceit before the Demandant hath entred, *Tamen quare*. And in a Writ of Disceit the Process shall be made against the Summoners, Viewers and Pernors to be examined thereupon &c. And if the Demandant who recovered by false return of the Sheriff make a Feoffment of the Land, then the Writ of Disceit lieth against the Demandant who recovered, and against his Feoffee and the Sheriff, and if the Demandant who recovered be dead, and the Sheriff also, yet the Writ of Disceit lieth against the Demandants heir and against him who is Tenant of the land, if the Summoners, Viewers and Pernors be living: But if the summoners, viewers, or pernors be dead, then the Writ of Disceit is lost. But a Writ of Disceit lieth if any of the Summoners, Viewers, or Pernors be alive, for if they say that they did not summon him, then the

3 E. 3. Disceit 47.
18 E. 2. Disceit 54.

38 E. 3. cont.

T 4

Plaintiff

35 H. 6. 46. Plaintiff in the Writ of Disceit shall recover his Land and shall be restored, &c. for it ought to be done by two Summoners at the least, and two Viewers, &c. And if any of them do not that which is returned they ought to do, then the Writ is not executed as it ought to be, by which the Plaintiff in the Writ of Disceit ought then to be restored, &c.

And in a *Scire facias* to execute a fine, if the Sheriff return the Tenant summoned by two Summoners, if it be not true, yet the Tenant by the return shall lose the Land, for execution shall be awarded upon the return if the Tenant do not appear, and then the Tenant shall have a Writ of Disceit against the Sheriff, and him who had execution and him who is Tenant, and shall be restored to the Land.

And so if a man sue a *Scire facias* upon a recognisance of debt, and the Sheriff return the defendant summoned where he is not summoned, for which the plaintiff hath Execution awarded, the defendant shall have a Writ of Disceit against him who had execution, and the Sheriff shall be punished by this Writ for his falsity, and the party who recovered shall make restitution of that he recovered, &c.

[98]

35 H. 6. 46.

8 E. 6. cont.

where a man

loses by

Præcipe in

Capite.

where he

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have sued in

the Lord's

Court, and

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of the Court

48 E. 3. 20.

17 E. 3. 18.

20 E. 2. Dis-

ceit. 5. ac.

19 E. 3. Dis-

ceit. 3.

19 E. 2. Dis-

ceit. 36.

20 E. 3. Dis-

ceit. 4. he

shall not

have Disceit

by Wilby.

Hill. cont.

And if a man levy a fine at the Common Law unto another of Land which is in ancient demesne, the Lord of ancient demesne shall have a Writ of Disceit against him who levied the fine, and he who is Tenant shall avoid the Fine, and there he who ought to give the Land shall be restored unto his possession, and title which he hath given by the fine, because the fine and gift thereby is avoided. But if he who levieth the fine, have after by his deed released unto him who hath the possession by the fine or by the deed, confirm his estate in the Land, then he unto whom the release or confirmation is made, shall have and keep the land notwithstanding that the fine be avoided, because that release or confirmation made unto him being in possession, hath made his estate firm and rightful, against him and his Heirs who released or confirmed the same.

If a man do recover in a Writ of Waste where the Tenant was not summoned, &c. the Defendant shall have a Writ of Disceit, and shall be restored, *T. 9 E. 3.*

If husband and wife lose the land of the wife by default, they may sue a Writ of Disceit, and if the husband dieth, it seemeth the wife may sue a Writ of Disceit to be restored to her land, &c. or have a *Cui in vita* upon the Statute at her election; and the Writ of Disceit shall be directed unto the same Sheriff who did the Disceit, and false return, and not unto the Coroners, as appeareth, *Trin. 20 E. 3.* Yet it seemeth

E. 3.
36.

seemeth it is not Error, if it be directed unto the Coroners, ^{20 E. 3.}
&c. Disceit 5:

- D And in a Writ of Disceit, if the Sheriff return one Sum-
 moner dead, yet the other Summoner shall be examined, *&c.* ^{3 H. 6. 1.}
 And if it be found that he did not summon, *&c.* the party ^{13 E. 4. 1.}
 shall be restored unto the Land, and so if one Viewer, or Per-
 nor did not do that, which he ought to do, the party shall
 be restored, because it ought to be done by both, *&c.* But
 if Summons be by four men, as long as two of them be a-
 live, the Tenant who lost may have a Writ of Disceit.
- E And a Writ of Deceit lieth against him who embelleth ^{19 H. 6. 29.}
 a Writ, and also against him who procureth another to ^{50 71.}
 embelle a Writ, if it be embelled, *&c.*
- F And if a man doth bargain with another to enfeof him ^{20 H. 6. 34.}
 of certain lands, and afterwards he enfeofeth another man, ^{16 E. 4. 9.}
 he with whom he made the bargain shall have a writ of
 Disceit.
- G And if a man do recover in a *Quare impedit* by default, ^{26 H. 6.}
&c. if the Defendant be not summoned, he shall have this ^{Disceit 15.}
 Writ and the summoners and pledges upon attachment shall ^{27 H. 6. 5.}
 be examined thereupon. And the Disceit be found, he shall ^{vid. 34 E. 3.}
 have a Writ to the Bishop, *&c.* for him. ^{Disceit 57.}
- H If an Action of debt be brought against two as Executors, ^{Neither the}
 where one of them is not Executor, if he who is not Execu- ^{Clerk nor}
 tor confess the action; he who is Executor shall have a ^{the Def.}
 Disceit against him and recover as much in damages. ^{ousted.}
^{9 E. 4. 33.}
- I If an Attorney be not informed by his Client to plead in ^{Lit. ac.}
 any Action, and he plead, *Quod ipse non est veraciter informa-*
tus, & ideo nullum responsum, &c. the same shall be entred to ^{10 E. 4. 9.}
 save him of damages in a Writ of Disceit brought against
 him by his Master, *&c.*
- K If a man sell cloaths, and warrant them to be of a certain ^{11 E. 4. 6.}
 length, if they be not of such length, he who bought them
 shall have a Writ of Disceit against him upon his War- ^{5 H. 7. 41.}
 ranty, although the warranty be only by word: but if the
 Warranty be made at another time after the bargain made,
 then it ought to be in writing, otherwise he shall not have
 an action upon that warranty: for he shall not have an a-
 ction of Disceit therefore, if the warranty be not made up-
 on the bargain and at the time of the bargain.
- L The Writ of Disceit ought to be brought into the Coun- ^{9 E. 5. 7.}
 ty where the Disceit is supposed to be done.
- M If a man recover in a *Præcipe in Capite* by default where ^{8 E. 4. 6.}
 the lands are not holden of the King, nor he hath not the
 Lords License to sue in the Common Pleas, the Lord shall
 have

have a Writ of Disceit, and recover damages; but the recovery shall stand in force, and the Lord shall have Seignory, and he who recovered shall also hold over the King by way of Estoppel.

If a man procure another to sue an Action against me to N trouble me, I shall have a Writ of Disceit.

A Writ of Disceit shall be maintainable against the At-O torney and the Sheriff, because they put a Writ of *Habere facias seisinam* upon the file of the Sheriffs Writ, where they have not any Record to warrant it.

21 E. 3. 20. If a man levy a fine of Land in ancient demesn, and also p
5 E. 4. 6. of Land at the common Law, the party shall have a Writ
17 E. 3. 31. of Disceit for the ancient demesn Land, and shall avoid the
Disceit 37. fine for that Land, and the fine shall stand good for the
Land at the Common Law.

If a man lose Lands by default in a *Præcipe quod reddat*, Q and dieth, his Heir shall have a Writ of Disceit as well as the Father, and shall have restitution.

15 E. 3. If a man have Execution by default upon a Recognisance
Disceit 43. in a *Scire facias* sued against another, and the Defendant di- R
18 H. 2. 50. eth, his Executors shall have a Writ of Disceit and shall be
[99.] restored, &c. If the Disceit be found that their Testator was
not warned, there the Garnishers shall be examined, &c.

18 E. 3. Dis- And if a man recover an Annuity, and afterwards sueth S
ceit 42. a *Scire facias*, and recovereth by default, the Defendant shall
have a Writ of Disceit if he were not warned.

And the Vouchee shall have a Writ of Disceit where he A
3 & 4 E. 3. loseth by default if he were not summoned, &c.
Disceit 45.

In a *Præcipe quod reddat* against the Husband and the Wife B
at the grand Cape, the Husband appeareth in Person, and
the Wife appeareth by Attorney, who hath a Warrant which
18 E. 2. Dis- is insufficient, by which judgment is given upon the de-
ceit 54. 55. fault of the Wife against the Husband and Wife, &c. yet
they shall have a Writ of Disceit if they were not summo-
ned, &c.

And where a man loseth by default in a *Quare impedit*, or C
Wast, it behoveth that the Summoners and the Pledges up-
on the Attachment, and the Manucaptors upon the distress
shall be examined, when the Writ of Disceit is brought
19 E. 2. Dis- therefore. See in the title of Disceit in the abridgments for
ceit 56. that matter.

If a man sue a Writ of *Monstravit* against another to ac-D
count, &c. where he hath sufficient Lands in another Coun-
ty, by which he may be brought to answer by Writ of Ac-
count, the Defendant shall have a Writ of Disceit against
the

the Plaintiff who sueth the *Monstravit, quod vi Mich. 9. E. 2. Fitz. Disceit. 52.*

If Tenant for life loseth by default where he was not summoned, and dieth; he in the Reversion shall not have a Writ of Disceit, because he shall not have a Writ of Error, if not by the Statute, &c.

E If a man be Tenant for life of a Mannor in ancient demesne, and the Tenant of that Mannor doth levy a fine of his Land at the Common Law, the Lord of the Mannor who is Tenant for term of life, should have a Writ Disceit, and after his decease, he in the Reversion shall have a Writ of Disceit, and reverse that fine. 1 E. 3. 5. So of Lessee of years.

F If the King doth recover in a *Præcipe quod reddat*, or in a *Formedon* against another man by default, the Tenant shall have a Writ of Disceit as well as he shall have a Writ of Error, where the King recovereth by erroneous process, &c. or erroneous Judgment. See for this matter, *M. 10 H. 4. in title Traverse in the Abridgments.*

G And this Writ of Disceit shall sometimes issue out of the Common Pleas, or he may sue it out of the Chancery if he will, as if a man lose Lands by default in a *Præcipe quod reddat* in the Common Pleas, the Tenant if he were not summoned, shall have a Writ of Disceit out of the Common Pleas, if he will, or out of the Chancery. 22 E. 3. Disceit.

H And so if a man have Execution upon a Recognisance in the Common Pleas, or Kings Bench by default, &c. the Defendant shall have a Writ of Disceit, if he were not summoned out of that Court where the Execution was sued, &c. or out of the Chancery at his Election. 17 E. 3. 51. Disceit 39.

I And there are divers other Writs of Disceit, in the form of a Writ of *Audita querela*, as if one sue a *Præcipe quod reddat* against another, and the Tenant is essoyned at *Quind. Pasch.* which essoyn is adjourned until 15 *Trin.* the Term following, and the Demandant and his Attorney by Covin betwixt them recovered a Writ in the file of Writs, that the Tenant hath made *N. and M.* his Attorneys jointly and severally at the said *Quind. Pasch.* by which the Demandant challengeth that essoyn, because he had Attorney in the Writ not essoyned, by which at the day of Adjournment the essoyn is quashed, and the Demandant recovereth the Land by this default at *Quind. Pasch.* Now the Tenant shall have a Writ of Disceit against the Demandant and his Attorney, and the form of the Writ shall be in the nature of *Audita querela*, and shall be directed unto the Justices of the Common Pleas, and is such:

Rex

Writ of Disceit.

Rex Justic' suis de banco salutem. Monstravit nobis I. de B. quod cum W. de B. nuper implacitasset ipsum I. coram vobis in banco præd. breve nostr. de uno mes. &c. in B. & placit. præd. ad caption. inquisition. propriæ persequut. fuisset, diesque partibus prædict. à die Pasch. proxim præterito, &c. in xv. dies data extitisset, ad quem idem I. se fecit effoniari, & effon. ill. adjudicat. fuit usque ad xv. S. Trin. tunc proxim. sequent. prædictq; W. & P. attorn. sui collusion. inter eos præhabita machinavit. præf. I. de tenemento prædict. exheredar. S. de F. servient. ipsius W. de B. & W. de P. attorn. ipsius I. ipso die penitus ignorante recordare, & breve de attorn. in filaciis brevium in xv. Pasch. in banco prædict. et quandam calumniam supradict. effon. poni fecissent, et effon. prædict. pro eo quod prædict. I. attorn. suum in eodem placit. habuit non jacere asseruisset, quod ad dict. xv. S. Trin. seifina de tenemento prædicto pro eo quod attorn. præd. I. ad dictam quinden. Pasch. effoniatus non fuerit quod eidem W. de B. per considerationem Curie extitit adjudicata, in deceptionem Cur. nostræ prædict', et ipsius I. grave damnum, ac exheredationem manifestam, super quo idem I. per petitionem suam coram nobis et consilio nostro in parlamento nostro exhibitam, Nobis supplicavit, ut ei de remedio providere velimus in hac parte. Et quia prædict. W. de P. super præmissis coram vobis in banco prædicto allocutus ea cognovit ut dicitur. Vobis mandamus quod audita querela ipsius A. super præmissis, vocatisq; coram vobis tam præf. W. de B. et W. de P. quam S. de F. auditisq; hinc inde eorum rationibus, si per inquisitionem sic inde facient. aut per recognitionem eorundum W. W. et S. vel eorum alicujus vobis constare poterit, quod I. tenementa prædicta per collusionem prædictam amisisset; ut est dictum, tunc tam super deceptionem et collusionem prædictam quam super recuperationem tenementi prædicti habend. jam pro nobis quam præfat. I. justitiæ complementum fieri faciatis, prout de jure fuerit faciendum. Teste, &c.

If a Notary or other person of Covin counterfeit the Seal of any Parson or Vicar, and forge Letters of Resignation of his Parsonage or Vicarage, in the name of the Parson or Vicar of his Benefice, he shall thereupon have a Writt of Disceit, and the Writ is in the Register. But whether by that he shall be restored unto his Benefice, *Quare*, it seemeth not, because the removing of him is a Spiritual act.

If two several men come before the Mayor of the Staple, or before other Mayor of a Town, and there one acknowledgeth unto another 100 l. in the name of another man, affirming him to be such a person, which in truth he is not: for which the other person is troubled, and fued upon the Statute, and taken in Execution, &c. he shall have a Writ

Writ of Breaking the Pound.

221

Writ of Disceit against the two persons, &c. and shall recover damages against them.

B And so if a man be bounden unto a Prior by a Statute-Merchant in 40 l. to be paid at a certain day, at which day he payeth the money unto the Prior, &c. and afterwards another person in the Priors name, cause the Statute to be certified in the Chancery, and sue Execution thereupon, the Prior not knowing thereof, he who was bounden and hath paid the money, shall have a Writ of Disceit against the Prior, and those who sued the Execution in his name.

C If the Escheator, by vertue of a Writ directed to him, doth seize into the Kings hands the Lands of any person who holdeth of the King in Chief, by which the King commits the Wardship of those Lands unto another, who grants them over unto another during the Nonage of the Heir. Now if the under Escheator of his own authority return another Officer without Enquest, &c. and disturbeth the possession of the second Grantee, the second Grantee shall have a Writ of Disceit against the under Escheator: And so if the Escheator, of his own authority have so done without taking any Enquest, &c. according to the course of the Law; and these Writs are in the Register.

And thereby it appeareth, that an Escheator may have an under Escheator, as well as the Sheriff may have an under Sheriff.

D And also it appeareth, that an Escheator shall be punished, although he be an Officer of Record, if he return any Office, *virtute Officii*, which he hath not taken any Enquest to enquire of the same: and the Process in the Writ of Disceit is Attachment and Distringas.

Writ de Parco fracto.

E A Writ of *Parco fracto* lieth where a man distraineth Cattle for damage feasant, or for Rent or Service; and put them into the Common Pound, or into another Pound or place, which shall be said to be a lawful Pound; and he who hath property in the Cattel, or other person taketh the Cattel out of the said Pound, and driveth them where he pleaseth: he who distraineth him for, &c. shall have the Writ *de Parco fracto*.

If a man sendeth his Servant to distrain for Rent or Services, and the Servant distraineth the Cattel, and impoundeth them, and a stranger taketh them out of the Pound, the Master shall have the Writ *de Parco fracto*, and not the Servant, for it is the Masters Pound. If

3 H. 7. 9. It is
a Pound as
well as if it
were in his
several Fair-
faic. cons.

If a man distrain for Rent, or Services, or for damage feasant, and put the Cattel in the Land or Close of a Friend with his license, and he who owneth the Cattel taketh them out of the said Close, he who distrained them, shall have the Writ *de Parco fracto*, and not he whose Close it is: For who oweth the Close, ought to have an Action of *Quare clausum fregit*, &c. for that it is not his Pound, but the Pound of him who distraineth the Cattel; and the form of the Writ is:

Rex Vic' Lincoln salutem. Si A. &c. tunc pone, &c. B. ostens. quare cum idem A. in damno suo apud N. quadam averia, vel sic, averia præd. B. cepisset, & ea secundum legem & consuetudinem regni nostri ibidem imparcasset, idem B. parcum illum vi & armis fregit, & averia prædict. cepit & abduxit, & alia enormia ei inulit, ad grave damnum, &c.

And note, that this Writ is *vi & armis*, and he shall not shew in the Writ, what kind of Cattel they are, nor to whom the property of the Cattel doth appertain, if that he please not so to do.

And if a man send his Servant for to distrain for Rent, or Services, or for damage feasant, then the form of the Writ is such:

Ostens. quare cum idem A. in damno suo apud N. per B. servient. suum quandam bovem, vel, quadam averia capi fecisset, & idem B. bovem illum, vel sic: averia illa secundum legem & consuetudinem regni nostri Angl. ibidem imparcasset, apud C. parcum illud vi & armis fregit, &c. vel sic, pur Abbe, ostens. quare cum idem Abbas in domo sua in suburbio Lincol. per fratrem I. custod. cell. nostræ sanctæ Mariæ Magdal. extra Lincoln. quadam averia, &c. Aliter pro def. ita in curia dom', &c. quare cum idem A. in feod. suo apud N. per servient. suum averia præd. B. pro quadam defalta, quam idem B. fecit in cur. ejusdem A. versus E. in loquela quæ fuit in eadem curia inter, &c. per considerationem curiæ prædict. capi fecisset, & idem A. averia illa secundum, &c. imparcasset prædict. B. parcum, &c.

If a man do distrain for Amercement in a Hundred, and impound the Cattel, and the other taketh them out, the Writ shall be;

Quare cum idem A. per B. & C. ballivos suos de hundred. de N. quadam jumenta ipsius F. apud S. infra præcinctum hundred. prædict. pro quodam amerciamento, ad quod idem F. amerciatius fuit in eodem hundredo, ad opus prædict. A. levand. capi fecisset, & idem B. & C. jumenta, &c.

41 E. 3. 26.

47 E. 3. 13.

12 H. 7. 15.

And in this Writ he ought to shew, that the property of the Cattel were in him who was amerced, because he cannot

distrain

distrain the Cattel of other men for this amercement : but for Rent or Service it is otherwise. For the party may distrain the Cattel there levant and couchant upon the Lands.

[101.]

If the Queen do distrain for a debt or amercement due unto her, and impound the Cattel, and a stranger doth break the Pound, and take them out, then she shall have a Writ, and the Writ shall be such :

Rex Vic. S. salutem. Pone per vaa', &c. P. de E. & C. de D. quod sint, &c. ad respondendum tam nobis quam Annæ Reginae Angliæ, quare cum W. de R. bakiuus libertatis prædict. Reginae, hundred, de C. in quo eadem Regina sicut in cæteris terris & tenementis suis sibi per nos concessis habet returnum omnium brevium nostrorum pro ut ad ipsum W. ratione officii sui pertinuit, virtute returni cujusdam brevis sibi pro te infra libertatem præd. facti. pro quodam debito ad opus prædict. Reginae de prædict. P per sum. seacarii nostri levando, averia prædict. P. apud B. cepisset. & ea secundum legem & consuetudinem regni nostri ibidem imparcasset. prædict. P. & C. parcum illud vi & armis fregerunt, & averia prædict. ceperunt & abduxerunt, & alia enormia ibidem perpetraverunt in nostri contemptum, & ipsius Reginae grave damnum, & contra pacem nostram, &c.

A And when the Queen sueth any Writ, the Writ shall not say, &c. *Si Anna Regina Angl. fecerit te secur' &c.* for she shall not find sureties as a Common person shall do, for she shall not be amerced, as appeareth by the Writ before.

B If the Husband do distrain for Rent or Services which he hath in right of his Wife, and a Stranger taketh them out of the Pound, the Husband shall have the Writ *de Parco fracto* in his own name : but yet it seemeth he may sue the same in his name, and in the name of his Wife, and joyn the Wife with him, *tamen quere.*

Writ of Rescous.

C **T**He Writ of Rescous lieth where a man doth distrain for Rent or Services, or for damage fefant, or would impeach or impound the Cattel, and the other party doth rescue them, or taketh them from him, then he shall have this Writ of Rescous ; and the Writ is such :

D *Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. ostens. quare cum idem A. in feodo suo apud S. quædam averia, vel sic : averia præd. B. cepisset, & ea ibidem secundum legem & consuetudinem regni nostri Angliæ imparcari voluisset, prædict. B. averia præd. vi & armis rescussit et alia, &c. vel sic. : Quare cum idem A. in feodo suo apud S. pro consuetud. & servic. sibi debitis per Co. serviens.*

Writ of Rescous.

servient. suum quædam averia capi, vel sic. Quendam caretam ipsius B. ca i fecisset. Et idem C. caretam illam usque manerium prædicti A. de S. secundum, &c. ducere voluisset, prædicti B. caretam illam vi, &c. in ipsum C. insultum fecit, &c.

And so it appeareth he may joyn, in a Writ of Rescous, for the assault and battery of his Servant.

And if he do distrain Cattel, and other dead Chattels, E then the Writ shall be ;

Ostend. quare cum idem A. in feodo suo apud S. pro consuetudinibus & servitiis sibi debitis, averia, & catalla prædicti B. cepisset, & averia illa imparcasset, & catalla prædicti. nomine distractionis secundum legem & consuetudinem regni nostri. Angliæ detinere voluisset, idem C. averia illa rescussit, & catalla prædicti. eidem A. abstulit, & alia, &c.

And if he do distrain for a Rent-charge, the Writ is such :

Quare cum idem A. in quodam tenemento ipsius B. apud N. pro quodam annuo redditu per scriptum ipsius B. obligatorium distractionis ipsius A. obligato pro redditu prædicti. à retro existent, quædam catalla ipsius B. cepisset, & ea nomine distractionis secundum legem, &c. ibidem detineri voluisset, prædicti B. catalla prædicti, &c.

And note, That if a man send his Servant to distrain for Rent, or Service, or damage fasant, and Rescous be made upon the Servant, the Master shall have the Writ of Rescous and not the Servant : for the wrong is done unto him who ought to have the Rent or Service, or is damnified, &c.

If a Collector or sub-Collector distrain for Fifteens, and Rescous be made, he shall have the Writ of Rescous, and the Writ shall be such :

Si W. de S. subtaxator decimæ in villa de S. nobis per cives G & burgens. regni nostri ultim. concess. &c. fecerit te, &c. tunc pone B. &c. ad respond. tam nobis quam præfat. W. quare cum idem W. quædam catalla ipsius B. pro certa pecunie summa ratione decim. prædicti. assessa cepisset, & catalla illa ibidem nomine distractionis nomine nostro detinere voluisset prædicti B. catalla illa præfat. W. ibidem insultum fecit, & ipsum verberavit. &c. & alia, &c. in nostri contemptum & prejudicium, & prædicti W. grave damnum, & contra pacem, &c.

And if the Bailiffs or Officers do arrest certain persons, and others Rescue them from the Officers, then he who caused them to be arrested, shall have the Writ of Rescous, and the Writ shall be such :

Quare cum idem Prior per chartam Domini E. quam inspeximus habere debeat apud W. liberam curiam suam de omnibus hominibus

hominibus suis, tam burgens. quam aliis, & de omnibus placitis & querelis & attachiamentis qualitercunque contingent. una cum pri-
 sis & omnibus aliis ad homines suos spectant. Ac idem Prior per B.
 ballivum suum apud F. R. & M. homines ipsius Prioris pro diver-
 sis transgress. apud T. infra libertatem prædict. Prioris per ipsos
 (ut dicit.) contra pacem nostram factis, unde clamor & hutesium
 ibidem levat. fuerit, attachiari fecisset, & idem Pr or ipsos R. &
 M. ibidem secundum legem & consuetudinem detinere voluisset. ju-
 stic. in hac parte in Curia Prioris prædict. subitur. prædict. B. & L.
 præfat. R. & M. de prædict. transgr. non justificat. a custod.
 ipsius B. vi & armis ceperunt, & quo voluerunt, abire permis-
 erunt, & alia enormia, &c. ad grave damnum ipsius Prioris, & liberta-
 tis sue lesion. manifestam, & contra pacem nostram.

And note, that if the Bailiff or Sheriff, or other Officer
 of the King, do arrest a man, or distrain him for debt, or other
 service due to the King, and Rescous is made, then the Bai-
 liff or other Officer shall have the Writ of Rescous in his
 own name and not the Kings, and the Writ shall be such :

Si T. ball. hundred. de F. fecerit, &c. tunc pone. &c. ad respo-
 dendum tam nobis quam præfat. ball. quare cum idem ball. juxta
 officii sui debit. W. quem per Vicecomitem nostrum Com. prædict.
 per breve nostrum de judicio sibi directum capi præciperimus apud
 K. virtute mandati nostri prædict. cepisset. & ipsum usq; castrum
 nostrum R. in prisona nostra ibidem moraturum ducere voluisset,
 prædict. R. & S. i sum W. apud villam de K. vi & armis rescu-
 serunt. & alia, &c. in nostri contem tum, & prædict. ball. grave
 damnum, & contra pacem nostram, & habeas, &c.

A And if the Bailiff would arrest any person, and he himself
 do rescue himself, and will not obey the arrest, then the
 Writ shall be such :

Si H. de ball. ville nostre de S. fecerit, &c. tunc pone. &c.
 quare cum idem H. juxta officii sui debitum præfat. B. pro quodam
 hutesio super ipsum per W. de S. apud C. levat. ad querimonia præ-
 dict. W. secundum legem & consuetudinem regni nostri attachias-
 set, prædict. B. se justiciari non permittens attachiament. prædict. vi
 & armis fregit, & in ipsum H. ibidem insultum, &c.

B And if the Sheriff send unto the Bailiff of the Liberty to
 levy fines and amercements for the King, and the Bailiff di-
 strain certain Cattel, and the Rescous is made; Now the Lord
 of the liberty shall have a Writ of Rescous of the Rescous
 done to the Bailiff, and for the battery and assault made upon
 him, and for the loss of his Service, and all in one Writ.

If the Kings Bailiff do distrain for Rent, and Rescous is
 made, the Bailiff shall have the Writ of Rescous, and not the
 King.

And if a man sue forth an Execution, and hath a *Capias* directed to the Sheriff to arrest the party and the Sheriff make his Warrant to the Bailly of the Queens Liberty where the party dwelleth, to arrest him, by which the Bailiff doth arrest him, and others do rescue him from the Bailiff, he who sued forth the Writ of Execution, shall have the Writ of Rescous against him that rescued him, as appeareth by the Register : but yet it seems reasonable that the Bayliff have a Writ of Rescous in such case : for some say the Bayliff shall be chargeable to him, who sued forth the *Capias*, &c. and for the arrest, *Tamen quare.*

And it appeareth by the Register, That if a Writ be directed unto the Sheriff, to levy the expences of the Knights at the Parliament, and the Sheriff make his Warrant unto the Bayliff of the Liberty of the Bishop of Ely, to levy the sum assessed ; &c. for which the Bailiff by his under-bailiff doth take certain Cattell and would impound them, and other persons do rescue the Cattell and beat the under-bailiff, that the Bailiff shall have the Writ of Rescous against them; and there it seemeth that the Knights which should have the money, shall not have a Writ of Rescous for the same Rescous, because it is not a duty unto them by any person certain, but to be levied of the Inhabitants of the Towns.

And if the Lord do distrain his Tenants Cattell, and a strangers Cattell, for Rent or Service behind, when there is not any Rent or Service behind, the stranger may rescue his own Cattell, but not the Tenants as it seemeth. And that as it seemeth by the Statute of Marlbridge cap. 3. which willeth, *Non ideo puniatur Dominus per redemptionem*, yet the opinion of Thorpe M. 31. E. 3. is contrary, for he saith, the stranger may rescue as well the Tenants Cattell as his own. *Quare.*

Vi. Lit. 32. And Rescous is not, but where he hath the possession of
9 H. 7. 4. the Cattell, or the thing of which the Rescous is supposed to be made : For if a man come to arrest a man, or to distrain, and he is disturbed to do the same, he shall not have a Writ of Rescous, but an Action upon the Case.

And the King shall not have the Writ for a Rescoufe done to his Officer, *qd vi. P. 20. E. 3.* but he may cause him to be indicted for the same.

Audita Querela.

THIS Writ of *Audita Querela* lieth as well upon matter in fact, as upon matter in writing, as after appears. And this Writ shall be directed unto the Justices of the

the Common Pleas or Kings Bench, and lieth where *A.* and *B.* come before the Mayor, &c. and *B.* doth acknowledge himself to be bounden in 100*l.* to *A.* in the name of *C.* before the Mayor; and affirmeth his name is *C.* and afterwards *C.* is arrested by force of this Bond and Statute, and taken in Execution; Now *C.* shall have *Audita Querela* against *A.* and *B.* and the form is such:

*Rex Iusticiariis suis de banco salutem. Querelam C. recepimus continent. quod A. & B. collusione inter eos apud W. prahabita, Cur. nostr. illuder. & pref. C. call de prahavare machinantes nuper coram C. Majore ville nostre Southampten, & R. Clerico ad recognitionem debiti. apud S. accipiend' deputat comparentes ipsum C. & C. C. sacramento corporali ad hoc pref. exist. assuerunt, per quod idem B. sub nomine ejusdem C. pref. A. 100*l.* ad cert. terminum jam preterit. solvend. coram eisdem Major. & Clerico, juxta formam statuti dudum apud Acton. Burnel pro mercatoribus editi, se deber. recogn. & postmod. ipsum C. pro eo quod ipse pred. 100*l.* pref. A. ad terminum pred. non solvit, per pref. Majorem capi, et in prisona nostra salvo custodiri, quousq; eidem A. de eisdem 100*l.* plen. satisfac. false & malitiose procurar. in ipsius C. damnum non modicum & deceptionem Cur. nostre manifestam: su er quo idem C. nobis supplicavit, ut sibi remedium congruum adhiberi velimus: Vobis mandamus, quod auditis querelis i. suis C. in hac parte, & vocatis coram vobis pref. A. & B. ac pref. Majore & Clerico, auditisque hinc inde partium ration. eidem C. s. per falsitat. malitia, & decep. pred. plenam & celerem justiciam fieri fac. prout de jure. & secundum consuetudinem regni nostri fore videritis faciendum. Teste, &c.*

A If a man Lease Lands unto *A.* for life, and afterwards by fine grants the reversion unto *B.* in Fee, and dieth, and the heir of the Recognisor, and one *L.* by Covin betwixt them sue a *Præcipe in Capite* against the said *A.* supposing the Land to be holden of the King, whereas it is not holden of the King, but of another person: And in this *Præcipe in Capite* they cause one *F.* to appear as Attorney for *A.* and to joyn the Mis. in the said Writ: and afterwards the Attorney by Covin doth make default, for which Judgment is given against *A.* Now upon the same matter he shall have an *Audita Quer.* directed unto the Justices of the Common-pleas, commanding them to proceed as well for the restitution of the Land, as upon the Disceits, and to do speedy Justice as of right according unto the custom of the Realm they ought to. And the Writ is such:

Rex Justic. suis de banco salut. Monstravit nobis A. ut cura
U 2 ipse

ipse nuper manerium de C. cum pertinen. in Com. L. ad terminum vite sue tenuisset ex dimissione I. ac H. fil. & her. prædict. J. manerium prædict. T. de S. & hered. de corpor. ipsius T. exeuntibus (ut dic.) per finem inde in Cur. nostra coram Justic. nostris de banco apud W. levat. post mortem præd. A. habend. concessisset, B. filius & heres prædict. H. & L. collusion. inter eos præhabita, præfat. A. de prædict. manerio amover. & præfat. T. de revere. manerii prædict. excluder. machinantes breve nostrum (quod vocat. Præcipe in cap.) Vic. nostro Leicestr. ad certum diem jam præterit. retornabile de manerio prædict. ac si idem maner. de nobis teneret. in capite cum non teneat. sub nomine præd. E. versus præf. A. & T. in Cancellar. nostra impetrari, & brev. nostr. prædict. quod præd. A. & T. juxta formam brevis præd. sum. fuerunt essendi coram vobis ad diem præd. per præf. Vic. retorn. ac quendam ignotum qui se R. de S. nominari asseruit coram vobis in banco præd. apparer. ad perdendum vel lucrandum in loquela præd. per præf. A. & T. attornat. ipsius A. & T. de impetratione brevis sum. & attornato præd. sub nomine suo ut permitti, facto peni us ignorantibus falso & malitiose procuraverunt, ac præf. attornat. ad eundem diem coram vobis comparens posuerit se in magnam assisam nostr. & petierit recognitio fieri, utrum iidem A. & T. majus jus habuer. tenend. dictum man. cum pertinen. sicut illud tenuer. ad præd. E. habend. dict. man. sicut illud petiit, per quod per defaultam quam iidem A. & T. postmod. fecerunt, in ead. Cur. per vos consideratum fuit ibid. quod præd. E. recuperaret seisinam suam de præd. man. cum pertin. versus præf. A. & T. Tenend. eidem E. & hered. suis quiete de præd. A. & T. & hered. suis in perpetuum, cujus quidem considerationis prætextu præd. A. a man. sua præd. cum pertin. perpetue est amotus, in ipsius A. damnum non modicum, & Cur. nostre deceptionem manifestam super quo præfatus A. nobis supplicavit congruum remedium sibi adhiberi. Nos hujusmodi collusionem, malitiam, & deceptionem, transire nolent. impunit. Vobis mandamus quod audir. querel. ipsius A. in hac parte, & vocat. coram vobis præf. E. & L. L. & al. in hac parte, quos for. videritis vocand. & auditis hinc & inde partium rationibus, ulterius eid. A. tam super restitutione & recuperation. dicti man. quam super collusionem, malitia & deceptione præd. plenam & celerem justic. fieri faciatis, prout de jure & secundum legem & cons. regn., &c. faciend. Teste, &c.

And by this Writ it seemeth the Justices ought to make void the recovery, if they find the Disceit, &c. yet it seemeth they may not so do.

If a man be bound in a Statute-Merchant, and afterwards maketh a Feoffment of parcel of his Lands unto another

ther man, and of other parcel unto another, and the Recognisee sueth execution upon the Statute, and hath Execution against one Feoffee, that Feoffee shall have an *Aud. Querela* against the other Feoffee, to shew cause why he should not have Execution of his Lands, as of the Lands which himself hath.

C If a man be bounden in a Statute Merchant, and certain Indentures of Defeasance are made of the said Statute, and afterwards the Conusee doth arrest the Recognisor and imprisoneth him, and taketh the defeasance from him, and then sueth Execution upon the Statute, the Recognisor shall have an *Audita querela* against him upon the whole matter.

A If at the *Nisi prius* in Trespass it be found for the Plaintiff, and damages assessed, and before the day in Bank the Plaintiff release unto the Defend. all Actions and demands, and afterwards prayeth Judgment, and sueth Execution thereupon, the Defend. upon that release shall have an *Audita Querela*.

36 H. 6. 24. 21 H. 7. 83. 3 H. 4. Br. Audita Querela 37 Fitz. Release. 53. Release of all actions is not sufficient mateer to have Audita Quer.

B And the Heir of the Recognisee may sue an *Audita Querela*, if he have matter in writing to discharge the Execution.

C If a man be bound in a Statute-Merchant or Staple, and afterwards payeth the money according to the Statute, and hath the Statute delivered unto him, and cancelleth the same, and afterwards the Recognisee forgeth a new Statute in the name of the Recognisor, the Recognisor upon the Statute cancelled shall have an *Audita Querela*.

D If a Statute Merchant or Staple be made by one unto another, and delivered into the hand of a stranger to deliver upon Conditions performed, and the stranger doth deliver the Statute before the conditions performed, and the Conusee sueth Execution thereupon the Recognisor shall have an *Audita querela*.

E If a man sueth forth an Execution upon a Statute, and hath Execution, and afterwards grant over his Estate, the Recognisor shall have an *Aud. Querela* against the Grantee without naming him who sued the Execution, if he have matter in writing for to sue, &c.

F A man may sue an *Aud. Quer.* against the Recognisee, because he hath purchased a Mannor unto which the Recognisee is a Villain regardant, and yet he may enter and seize the Recognise without such sute.

9 H. 4. 4. 32.
E. 3. Execut.
127. 45 E. 3.
51. 16 Eliz.
Dy. 337.
E. 3. 522. &
3 Eliz. Dy.
193. 194.
Whaleys
case.

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40 Aff. 23.
44 Aff. 15.
Holt. Br.
Audit. Que-
rela. 43. 9 H.
5. 1. Br. Au-
dit, quer. 16.

48 E. 3. 5. 15.
H. 8. 5. vi. 2.
and 3. Eliz.
Dy. 193.
43 E. 3. 38.
Finchden.

43 E. 3. 27.
con. 12. h. 4.
6 Calp. cont.

12 H. 4. 15.
and 16.
Frankford.

41 E. 3. Aud.
quer. 18.

46 E. 3. 28. And a stranger who made not the Recognisance, nor was G
Fulthorp. Tenant of the Land at the time of suing forth of the Ex-
17 Aff. 24. cution, shall have an *Audita querela*, if he have matter of
Audit. quer. Discharge in Writing. Vi. 11 E. 3. Lit. Aff. and there it is
20. 10 E. 3. said the same is given by the Statute. The Feoffee shall not
25. Error 71. have a Writ of Error, &c. Nor the Feoffee of the Conusor
had Error. of part of the Lands shall not have an *Audita querela* until
his Lands be taken in Execution.

18 E. 3. 36. If a man sueth *Audita Querela* against the Conusor, and H
Audit. quer. sheweth a Statute cancelled; and saith the same was deli-
9. the Co- vered to him in lieu of Acquittance, the Recognisee may shew
nusor must the true Statute, and shew that the Statute shewed which was
shew the cancelled was a forged Statute and thereupon he shall have
Stat. other- a Writ unto the Justices in the nature of *Aud. Quer.* com-
wise he shall manding them that they send for the Mayor and the Clerk,
not have the and for the parties, and for to do right; and the Examina-
plea. tion of the Mayor and Clark shall try and end the matter,
quod vi. M. 11 E. 1.

48 E. 3. 20. Upon a Recovery of a Debt, if he sue a *Scire facias*, and I
22 H. 4. 4. the Sheriff return *nihil*, by which an Execution is awarded,
per Hungerf. the Defendant shall have *Aud. Quer.* if he have a Release
21 E. 3. 15. or Acquittance, because he was not warned: But if the She-
Hil. Audit. riff hath returned him warned, he shall not have *Aud. Quer.*
Quer. 18. upon such Release, &c. because he might have pleaded the
6 E. 7. Eliz same upon the return of the *Scire Facias*.
Dy. 232. rule

that the And if an Infant bind himself in a Statute Merchant or
Writ doth Staple, he shall have an *Aud. Quer.* during his Nonage to a- K
not lie after void that Statute, and afterwards he shall have an *Aud. quer.*
he cometh after his full age to avoid that Stat' upon that matter in Fact.
of full age

13 E. 3. 18. And so if a man make a Statute-Merchant or Staple by
E. 3. 8. duress, he shall have an *Aud. Quer.* to avoid that Statute by
15 E. 4. 5. this imprisonment.
Brin. ac. 20.

E. 3. If two be severally bounden in two several Statutes, and L
Audit. quer. afterwards the Recognisee by deed doth release both the Sta-
27. 20 E. 3. tutes to one of them, if he sue Execution against them se-
Audit. quer. verally they shall joyn in *Aud. Quer.* upon that Release.
28.

If the Recognisor enfeoff a stranger of parcel of the M
Land and afterwards enfeoffeth the Recognisee of another
35 H. 8. Br. parcel of the Lands, and afterwards the Recognisee sueth Ex-
Audit. quer. ecution against the Recognisor and the Feoffee; the Feoffee
39. shall have an *Aud. Quer.* against the Recognisee and discharge
his Lands, because that the Recognisee hath discharged his
24 E. 3. 24. parcel of Land which he purchased by his own act.
Br. Audita

quer. 22. Upon an *Audita Querela* sued he shall have a *Superseas* O
9 H. 5. 1. in the same Writ to stay Execution, &c. But if he be
Nonsuit

Non-suit, he may have a new *Audita Querela*, but then he shall not have a *Superfedeas* to stay Execution.

P And a man shall not have an *Audita Querela*, supposing the Recognisee will sue Execution, but it ought to be alledged in the Writ, that he hath *in facto* sued Execution.

Q If a man sue *Audita Querela* upon a Release, and afterwards is Non-suit, he shall not have an *Audita Querela* upon new matter, *ut dicitur* 43 E. 3. But it seemeth the Law is otherwise but he shall not delay Execution by a new *Audita Querela*. 43 E. 3. 28. Thorp. 24 E. 3. *Audita querela*. 11.

R If a man doth comprehend two matters in the *Aud. quer.* to extinguish the Execution, yet the Writ is good, but the Plaintiff shall hold himself to one matter, and the Defendant shall answer to that. And variance betwixt the *Aud. Quer.* and the Record shall abate the Writ. But there in a new *Audita querela* sued according to the Record, he shall have a *Superfedeas* to stay execution, &c. although he had before a *Superfedeas* in the other *Audita querela*, which was abated. 44 E. 3. 36. 24 E. 3. 27. Br. *Audita querela*. 24.

S If a man sue Execution upon a Statute Merchant and hath a *Capias* returned in the Common pleas, If the Feoffees or parties will sue an *Audita querela*; they ought to sue the same out of the Chancery, directed unto the Justices of the Common Pleas. Vi. 22 H. 6. 56.

T If a man sue an Execution upon a Statute Merchant as Executor unto another; the party shall not have an *Audita querela*, supposing in the Writ that he who hath such Execution is not Executor. 2 R. 3. 8. *con* if the testator be living. 24 B. 3. 30. Br. *Audit. querela* 41.

And the process in *Audita querela* is *Venire facias* and *Disstringas*, *Alias* and *Pluries Disstring.* and if he return *Nihil*, or *Non est inventus*, he shall have a *Capias* against the Defendant. 43 B. 3. 1. he shall not have *Capias* but *scut alias*. T. 18 E. 3.

A man recovereth by default in an Action of Wast, the Defendant sueth an *Audita querela*, directed unto the Justices out of the Chancery, surmising in the Writ, that he was not summoned, nor attached, nor distrained; For which the Justices grant out of the Rolls in the Common Pleas, a Writ of Disceit against the *Audita querela* which was but a commandment to the Justices to do right unto the party, &c. 12 H. 4. 6. and 15. *Trin.* 19 E. 3. And yet they shall proceed upon the Writ of Disceit, and not upon the *Audita querela*.

B If a man be bounden in a Recognizance in the Common Pleas, and afterwards doth release unto the party, and then against his Release sueth Execution; Then he shall there come into the Common Pleas, and shall sue an *Audita querela* thereupon out of the Rolls. And so if one recover in the Common Pleas or Kings Bench, debt or damages, and afterwards

afterwards by his deed releaseth the same, and afterwards sueth forth Execution upon the Recovery, the party to whom he released shall have *Aud. quer.* out of the Common Pleas or Kings Bench where the Record is, and yet he may have an *Aud. quer.* out of the Chancery, and so it shall be sometimes Judicial, and sometimes Original.

And if a man be bounden in a Statute Merchant or Statute Merchant, and afterwards the Recognisee make a defeasance unto the Recognisor; now if the Recognisee sue execution upon the Statute against the form of the Indentures, the Recognisor (or his Executors if he be dead) may have an *Aud. quer.* against the Recognisee.

46 E. 33.

48 E. 3. 12.

47 E. 3. 5.

47 E. 3. 25.

And it appeareth in the Register, That a Writ of *Aud. quer.* lieth for an infant who hath entred a Statute Merchant or a Statute Staple during his nonage, if he be yet within age.

And another *Aud. quer.* appeareth in the Register for the Feoffee, of parcel of the Land which belonged to the Recognisor against the Recognisee, because that the Recognisee hath purchased other parcel of the Lands of the Recognisor, &c.

If a man be arrested and imprisoned upon a Statute Merchant, and afterwards the Recognisee doth release unto the Recognisor, or he pay the debt, and hath acquittance, or pay parcel, and hath a release for the residue; Then they may come into the Chancery, and there find surety, body for body to be in the Chancery at a certain day, and there to pay the money, &c. if he cannot discharge himself by acquittance or release, and thereupon he shall have a Writ unto the Sheriff where he is in ward, rehearsing how he hath found sureties in the Chancery, commanding him to deliver him if he kept him in prison for that cause, and for no other cause, and upon that he may have an *Alias* and a *Pluries* and attachment against the Sheriff if he will not deliver him, &c.

But if a man be arrested and imprisoned upon a Statute staple, and he hath acquittance or release to discharge himself, then if he will sue an *Aud. quer.* or a *Scire fac.* to avoid the Execution of that Statute, he ought for to give surety as well to the party, as unto the King in the Chancery, severally in a certain sum, &c. to sue with effect, and to render his body, or pay the money, &c. otherwise he shall not be delivered out of prison: and the same is by force of the Statute of 11 H. 6. cap. 10.

Writ of Attaint.

G THE Writ of Attaint lieth where false Verdict is given v. 4 Ma. 1.
 in a Court of Record against the Plaintiff or Defen- Br. Attaint
 dant, or against the Demandant or Tenant in a Pleal real or 127. it lieth
 personal sued by Writ or by Bill; if the debt or damages not upon an
 do exceed 40 s. Then he against whom the Verdict passed informat.
 shall have a Writ of Attaint, and the Writ shall be such : 40 E. 3. 11.
 If it be in an Action of Trespass in the King's Bench.

H Si E. de L. fec. te secur. &c. tunc summon', &c. 24. legal
milites de visn. de N. quod sint coram nobis apud B. in octabis
S. Hill. parati sacrament. recognosc. si jurator. per quos quedam in-
quisitio nuper capta fuit coram nobis apud B. per breve nostrum
inter I. & M. ux. ejus & pred. S. de quadam transgressione eidem
M. per pref. K. illata, ut dicit. falsum fec. sacram. sicut idem S.
nobis g'avit. conquerend. monstrav. & interim. diligen. inquiras, qui
fuer. juratores prime inquisitionis, &c. & eos tunc habeas coram p'f.
Justic. &c. vel coram nobis, &c. as the case is and lieth.

I And by the Statute of West. 1. cap. 38. a man shall have an
 Attaint in Plea of Land of Freehold, of a thing which touch-
 eth the Freehold.

K And by the Statute of 1 E. 3. cap. 6. a man shall have At-
 taint in Trespass.

L And by the Stat. of 5 E. 3. c. 6. in the end of the Statute 14 H. 7. 14.
 a man shall have Attaint of Trespass sued by Bill without Brian.
 Writ before Justices of Record, if the damages exceed 40 s.

M And also a Man shall have Attaint for the Damages, al- 14 H. 7. 14.
 though they be not paid, &c. Fineux.

N And if false Verdict pass by Writ of Nisi prius, then the
 form of the Writ is :

Parati sacramento recognosc. si jurat. per quos quedam inquisitio
nuper summon. fuit coram nobis, & capta coram dilect. & fidel.
nostr. T. de B. uno Justic. nostr. ad placit. coram nobis tenenda
assign. per breve nostrum de Nisi prius apud K. inter ipsum E. &
pref. T. de quadam transgr. &c.

O And if the Verdict be taken within any Liberty or Cor- 44 E. 3. 21.
 porate Town, then the Writ of Attaint is such : 44 Ass. Br.

Parati sacramento recognosc. si juratores per quos quedam in-
quisitio nuper sum. fuit, & capta apud L. sine brevi nostro coram
Majore & Ball. Civit. nostræ Lincoln. de loquela que fuit coram
dilectis & fidel. nostris S. Scrop. & sociis suis Justic. nostris ad pla-
cita coram nobis tenend. assign. inter I. de L. & pref. S. de quadam
transgr. eidem I. per pref. S. illatam, ut dicitur, que quidem loque-
la juxta libertates civitat. civibus civitat. nostræ pred. per char-
Attaint 131
tas

Writ of Attaint.

tas: progenitorum nostrorum quondam regum Angl. & confirmat. nostram concessas, coram eisdem Majore & Ball. nostris retorn. fuit placitum, falsum fecer. sacramentum, sicut idem J. nobis graviter inquerendo monstravit necne, & interim, &c.

And upon false Verdict given in London upon Nisi prius, the A form of the Writ is such :

Parati sacramento recogn. si jurat. per quos quedam inquisitio nuper sum. fuit coram nobis, & capt. coram R. de M. tunc uno justic. ad placita cor. nobis tenend. assign. associato sibi A de F. apud S. Martin Lond. juxta libertat. civitatis præd. per breve nostr. &c.

If false Verdict be given in a Corporate Town, upon a plaint without Writ, then it is such :

Parati sacramento recogn. si jurat. per quos quedam inquisitio nuper capta fuit coram nobis apud Linc. sine brevi nostro inter A. de D. de quadam transgressione, &c. illata, de qua quidem transgressione idem B convict. fuit, & 20 l. eidem A. pro damnis suis in hac parte adjudicat. existunt ut dicit. falsum fecer. sacrament. sicut idem A. &c.

And if false Verdict be given within the Verge, then the Writ C shall be such :

Parati sacramento recogn. si jurat. per quos quedam inquisitio nuper capta fuit coram Senesc. & Maresc. hospitii nostri apud C. sine brevi nostro inter K. & prædict. T. de quadam transgressione eidem R. per præf. T. apud C. infra virgam nostram ut dicebat. illata, falsum fecer. sacramentum, &c.

And if a man be condemned by false Verdict in Debt, or Damages, then if he sue an attaint, he shall have a special Writ unto the Justices, to bail him upon sureties taken, that if the attaint pass against him, he render himself to Prison, or satisfy the Debt, and the Writ is such :

Rex dilect. &c. E. de S. & sociis suis salut. Cum I. arrainerit cor. nobis per breve nostr. quandam jurat. 24. ad convincend. jurator. per quos quedam inquisitio nuper capta fuit cor. nobis apud W. per breve nostr. inter R. & præd. J. de quadam transgr. &c. illat. ut dicit. ac ex parte ipsius J. accepim. quod ipse prætextu processus in præd. placito de trans. facti. captus est, & in prisona Marescalcie nostræ cor. nobis detentus, quo minus jurat. suam præd. prosequi possit. super quo, &c. adhiberi, Nos volentes quod idem J. in prisona nostra præd. sis detineat. quo minus jurat. suam præd. proseq. valeat, ut debet: Vobis mandamus, quod idem J. invenerit cor. vobis suffic. manucapt. qui cum manucapiant habere cor. nobis ad prosequend. attinctam præd. & terminata attincta illa, si cont. ipsum transferit, vel ipse attinctam illam non fuerit prosecutus, quod reddat se prisonæ nostræ prædict. & satisf. tam nobis de eo quod ad nos, quam præf. R. de eo quod ad ipsum per-
tinet

tinet in premissis, & ulterius faciat & recipiat quod Curia consideraverit in hac parte, tunc iſum J. a prisoſa noſtra prædict. deliberaſi fac. per manucapt. huiusmodi, ad proſequendum attineſt. ſupradict.

E And if a Man vouch in a *Præcipe quod reddat*, one who entred into the Warranty and pleadeth, and loſeth by falſe Verdict, he ſhall have an attaint, and the Writ ſhall make mention of the voucher; And ſo if a Man pray to be received for default of Tenant for life, and is received and pleadeth, and loſeth by falſe Verdict, he ſhall have a Writ of Attaint, and the Writ ſhall mention the Receipt.

And ſo if it paſs againſt the Plaintiff by falſe Verdict, and he bring an Attaint, the Writ ſhall make mention of the Voucher, and of the Receipt; and ſo if he in the reverſion joyn with the Tenant for life by aid prayer, and they loſe, by which he in the reverſion brings an attaint he ſhall make mention in the Writ of the aid prayer; and alſo in aſſize, if it be diſcontinued and afterwards reattachment ſued, and he loſeth by falſe Verdict, the Writ of Attaint ſhall make mention of the re-attachment, becauſe he reviveth the original of Aſſize.

But if the Defendant in a Writ of Detinue pray garniſhment, who cometh and pleads, and the Plaintiff loſeth, by which he bringeth attaint againſt the garniſhee. the Writ of attaint ſhall make mention of the Garniſhment, That is well debated *M. 9 H. 6.* in the title Attaint in the Abridgment.

But, ſaving the opinion of the Book, it ſeemeth the Writ of attaint ſhall make mention of the Garniſhment, &c. for the Defendant in a Writ of Detinue who ſueth the Garniſhment, is in manner out of Court; and when the Garniſhee comes, the Plaintiff counteth upon his original Writ, which is the Writ of detinue, and the garniſhee ſhall answer to that Count; and the Writ of Garniſhment is but for to make him come in and answer to the plaintiff to his original and count, and when he comes and pleads, he pleads unto the Plaintiffs Count, which is upon the Original by which the Plea which is between the Plaintiff and the Garniſhee is upon the Original Plea, as it ſeemeth, *tamen quaere.*

And if a man plead a deed in bar, in which there are witneſſes, and the deed is denied, for which proceſs is awarded againſt the witneſſes, which joyn with the jury, and it is found the plaint. deed, now he ſhall not have an attaint, &c. becauſe the witneſſes do affirm the verdict by their teſtimonies. But if it be found not his deed, then the other party ſhall have an attaint, for the witneſſes cannot prove a negative, but of the affirmative they may have notice whether it be his deed or

not

not. A man shall have an attaint in special Cafes, where every word of the Verdict is true, as if a man hath had common appendant unto his Land, time out of mind, and he bring an Affize of the common, and make title that he hath had common, time out of mind, &c. without speaking of the Appendancy, and it is found for him; the Defendant shall have an attaint, for the Plaintiffs title is for common in grofs, and not common appendant; and yet the words of the Verdict are true, that he hath had common time out of mind, &c. but not in fuch manner as shall be taken by the title.

10 E. 4. 17.
ac. Co. 291.
292.

10 E. 4. 17.
24 H. 8. Br.
Attaint 96.

And so if a man have a Rent as Forrefter in fee of fuch a A Forest time out of mind, and in Affize of that Rent he make title thereunto, that he hath had a Rent out of that Land time out of mind, &c. without faying as Forefter in fee, &c. and it be found for him, the other party shall have an attaint upon that Verdict, altho' the words of the Verdict be true, for he hath not had fuch Rent by prefcription as shall be intended and taken by his title.

85 H. 6. 30.

11 E. 4. 5.

13 E. 4. 2.

14 H. 7. 5.

9 H. 6. 2.

3 H. 6. 29.

9 Martinac.

48 E. 3. 19.

cont. 33 H. 6.

25.

2 H. 4. 2. per

Curiam, 10

of Error.

18 H. 8. 1.

21 H. 6. 36.

18 H. 8. 5. 10.

38 E. 3. 12.

and 27 Br.

Collufion 18.

upon Writ of enquiry of

Writ of enquiry of

Writ of enquiry of

Writ of enquiry of

Writ of enquiry of

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If a man recover outrageous damages by Verdict, but he B releafeth parcel of the damages before Judgment, and hath Judgment for the residue, the Defendant shall not have an attaint for thofe damages which are releafed

And in a Writ of Waff the Plaintiff shall have a Writ to C enquire of the Waff, who if they give false verdict by which the Plaintiff recovereth, the Defendant shall have an attaint per Cur. M. 2. H. 4. But I do not fee how the fame can be warranted by any Statute, which giveth the attaint, becaufe the Writ of Enquiry is awarded by the Court ex officio per Sacramentum proborum, &c. And the Sheriff may make the enquiry by the Oaths of fix or eight perfons of the Waff, and he is not bound to take twelve perfons. Quere of this.

and 27 Br. Collufion 18. upon Writ of enquiry of Waff for an Abbot Quale jus shall iffue, which proves it is no Verdict but an Enquiry.

42 E. 3. 26.

The King shall have an attaint upon a false Verdict paf- D fed againft him as well as a common perfon.

34 H. 6. 32.

ac.

12 H. 4. 5. In

waff againft

two, one

made de-

fault, and the

other plead-

ed, he who

made default

shall not have

Attaint.

43 E. 3. 36.

34 H. 6. 12.

Morle cont.

39 H. 6. 1.

ac. 8 H. 4. 23.

Tirwn.

In Trefpafs againft two, one cometh and pleadeth Not E guilty, and is found guilty, and afterwards the other cometh and pleadeth Not guilty, and is found guilty by another En- queft; Now in this cafe the first Jury shall affefs all the damages for the Trefpafs, and the Defendant in the laft En- queft shall have an attaint of the damages affefsed by the first Enqueft, if they be outrageous or exceffive, &c. 11. C. 5. 6.

Tenant

- F Tenant by Statute Merchant shall have an attaint if he be barred in Assize by false Verdict, or found against him by false Verdict, where he is Defendant in the Assize. 21 Aff. 16. Br Attaint. 64.
- G If a man recover in a *Præcipe quod reddat*, against a Tenant by false Verdict, there have been divers opinions whether the Tenant shall have an attaint before Execution sued out against him. *Vi. 41 E. 3. Lib. Ass. 21. h. 6. 60.* But the Statute of 1 E. 3. saith, That a man shall have an attaint of damages before Execution sued of them, before which Statute it seemeth he could not have attaint of them. But in the time of E. 1. the Defendant sued forth an attaint for damages upon false Verdict given against him in a Writ of Trespass before the Plaintiff sued Execution of the damages, which see in title Attaint in the Abridgments, *temp. E. 1.* And also by the same reason, if a man do recover Land, the Tenant shall not have attaint before Execution. And *Non-tenure* hath been pleaded, and admitted a good plea divers times in an attaint. And on the other side if the Tenant shall not have an attaint before Execution sued, or entry made by the demandant or his heir, then perhaps they will not enter until the Jurors are dead, and then the Tenant shall be without remedy by attaint. 36 H. 6. 13. ac. in personal Actions 21 H. 6. 54.
- H If a man who was Tenant do recover in attaint, the Judgment shall be that he shall be arrested, &c. which could not be if the Demandant hath not entred, and when he himself is Tenant in possession. 26 H. 8. 2. 31 H. 6. 12. 35 H. 6. 39. 22 E. 3. 10. Br. Attaint. 42.
- I And I think it the better opinion, That if in Trespass the Defendant plead villainage in the plaintiff, &c. and he is found frank unto his damages of 20 s. the defendant shall not have an attaint for the smallness of the damages, &c. But in a *Præcipe quod reddat*, if the Tenant plead *Non-tenure*, and it be found against him, he shall have an attaint, &c. 5 Aff. 24. E. 3. 34. Br. Attaint 48. 6. Aff. ib. Br. 52.
- K An Attaint shall be maintainable against the Terre-Tenant without naming him who was party to the Record: Otherwise it is in a Writ of *Recordare*; for that shall be sued against him who was party, or his Heir or Executor, if it be a personal Action, otherwise it shall abate. 14 Aff. 2. Br. Attaint 59. 10 E. 4. 13. 3 H. 4. 18. 9 H. 6. 47. 34 H. 6. 36. 35 H. 6. 30. contr. is admitted. 34 H. 6. 36. 35 H. 6. 30. the contr. is admitted. 8 Eliz. Dy. 250.
- L Attaint doth not lie upon false Verdict given in an Appeal of Maihem, or Appeal of Felony or Murder.
- M An Attaint may be sued in the Common Pleas, if the Record be there; or it may be sued in the King's Bench upon a false Verdict given in the Common Pleas, if the Record be removed into the King's Bench.
- N A Recovery was in an Assize brought in the King's Bench, and afterwards that Record was sent unto the common pleas, and

44 E. 3. 2. and the party sued an Attaint upon the Record in the
44 Aff. 20. Common Pleas, *Vi. 8 E. 2. H. Affise. Iter Kan.*

21 E. 3. 10. Attaint was sued upon a false Verdict given against the
Br. Art. 32. Defendant when he claimed liberty, and adjudged that he
21 E. 3. 3. should have it. *H. 15. b. 3.*

ibid. 51. And the Writ of Attaint may be sued out of the Com-
H. 15. h. 3. mon Pleas or King's Bench, upon a false Verdict given in
21 E. Dy. the same Court, as well as out of the Chancery, *qd. vi. 30.*
364. *E. 1. Itin. Cornub.*

In a Writ of Entry brought in *Suffex*, the Defendant p
pleaded a Release in *London*, which was found against him
in *London*, for which he brought an Attaint in *London*, and
it was maintainable, *qd. vi M. 18 E. 1.*

If the King recover by false Verdict, he shall have At- Q
taint against the *Petit Jury* only, as if the King do recover
by erroneous process, &c. the party shall have a Writ of
Error of the Judgment, and shall not name the King, be-
cause he is always present in the Court.

2 H. 4. 4. The Vouchee or Tenant by Resceit, or he in the Rever- A
16 E. 3. sion where he joyneth to the Tenant by Aid prior, shall
Error 72. have attaint if he lose by false Verdict: and if Tenant for
20 E. 3. life lose by false Judgment, he in the Reversion shall have
Error 2. an Attaint or Writ of Error living the Tenant for life, by
21 H. 6. 29. the Statute of 9 R. 2. *cap. 3.*

If the Defendant in Trespass, plead Villenage in the Plain- B
tiff, and he saith that he is Frank, and is so found by Ver-
dict, and afterwards the Defendant dieth, his Heir shall
have at Attaint to avoid this Estoppel and false Verdict,
although it was given in a personal action.

3 H. 4. 13. In an attaint upon a recovery in *Præcipe quod reddat*, the C
3kyene. Defendant pleads Nontenure, and the Demandant saith, That
he made a Feoffment unto unknown persons, &c. and that he
brought the Action within the year, and with that, that he
will aver that the Defendants took the profits the day of
the Writ purchased; and the Defendant saith, That he did
not take the profits, &c. Now this issue shall be tried by the
21 H. 6. 55. attaint; and if they give false Oaths, he shall have an at-
21 E. 3. 10. taint upon that Verdict by *Newton*, as if in a Writ of Right
Br. Attaint 32. A shall be tried by twelve, and
not by the
Attaint.

19 Aff. 13. the Tenant plead a Collateral warranty, made within the
Br. Attaint 63. 32 Aff. same County, it shall be tried by the Grand Assize; and if
13 Br. At- they give false Verdict, he shall have an attaint, because
taint 75. the same is out of the point of Assize by *Newton*, *Tr. 21 h. 6.*

Nonfuit in attaint after appearance is peremptory, and D
he shall not have a new attaint, and so upon a *Retraxit*, if
the Demandant say he will no more sue his attaint, and
that

that he entred upon Record, he shall not after have another attaint.

E If a man have a *Præcipe quod reddat* against divers, by several *Præcipes*, and by Enquest it is found for the Demandant; he shall have a Writ of Attaint against the Tenant, &c. But if it is found against the Tenants, he shall have several Attaints; for as unto all of them, it is a several Enquest to try their Issues severally.

F If the Demandant be barred in a *Formedon* and afterwards releaseth all Actions, or all his right in the Land, yet his Heir shall have a Writ of Attaint.

G And so if the Father be Nonsuit upon an attaint upon a Writ of *Formedon*, he there shall have an Attaint.

H And a man shall have an Attaint before Justices of Oyer without original Writ, upon a Bill only sued before the same Justices, T. 5 E. 2.

I If false verdict be given in assize of Novel disse. then if the Plaintiff will sue an attaint, he ought to have such a writ.

Rex vic. Lincoln. salutem. Si A. fecit te securum tunc sum. &c. 24. milites de visn. S. quod sint coram iusticiar. nostris ad primam Assisam, cum in partes illas venerint. Vel sic, coram dilectis & fidelibus nostris R. de W. & B. de F. & his quos sibi associavimus de certis, &c. quos idem R. & B. tibi scire fac. parati sacramento recogn. si J. injuste & sine iudicio disseisnovit præfat. A. de libero tenemento suo in S. vel de communia pastura sue in S. quæ pertinet ad liberum tenementum suum in eadem villa, post primam transfectionem Domini H. filii Regis J. in Vascen. unde idem A. queritur quod juratores Assise Novæ disse. quæ inter eos sum. fuit & capta coram nobis apud W. per breve nostrum, vel coram præfat. R. & B. vel coram dilect. & fidelibus nostris W. de H. & sociis iusticiar. nostris ultim. itinerant. apud L. in com. tuo per breve nostrum falsum fecer. sacramentum, & interim diligenter inquiras, qui fuer. Jurator. illius ass. & eos tunc habeas coram præf. Justic. ad præfat. ass. vel coram R. & B. Et sum', &c. præd. I. vel sic: præd. I. H. qui prædict. tenementa nunc tenet: quod tunc sit ibi auditur. ibam recognitionem, & habeas ibi nomina Militum, & hoc breve.

K And if a man lose by false Verdict in Assize before Justices of Assize, if he will sue an attaint before the same Justices, he ought to sue a Patent directed unto the same Justices to give them authority to hold Plea thereof; or he may sue a Patent unto other Justices to hold Plea of that Writ of attaint, and the form of the Patent is such:

L Rex dilectis & fidelibus suis R. & B. salutem. Sciatis quod constituimus vos, &c. Justic. nostros, una cum his, quos vobis

14 Ass. 2. R.
attaint 59.

Writ of Attaint.

vobis associavimus ad jurat. 24. Milit. capiend. quam A. arrait. coram vobis per breve nostrum versus I. ad convincend. Jurator. in Assisa nova disseisin. quæ inter eos sum. fuit, & capta coram vobis apud W. per breve nostrum de tenementis in S. vel de communi pastur. in S. vel sic : coram vobis prefat. R. & dilecto & fideli nostro S. nuper Justic. nostris, &c. apud W. per breve nostrum de tenementis in S. & ideo vobis mandamus, quod ad certos, &c. provideritis, jurat. illam capiat, factur. inde quod ad justitiam pertinet secundum legem & consuetudinem regni nostri : Salvis nobis amerciamentis inde provenientes. Mandamus enim Vic. nostro Lincoln. quod ad certos diem & locum, quos ei scire fac. jurat. illam coram vobis venire fac. In cujus rei testimonium has l. teras nostras fieri fecimus patentes. Teste, &c.

And a man shall have a Writ of Attaint upon a false Verdict in an Assize of Nuisance. Quare levavit vel prostravit quoddam stagnum in N. &c. vel quoddam fossatum, vel quandam sepem, vel divertit cursum aquæ in N. ad nocumentum, &c. in eadem villa, And the form of the Writ is such :

[109.]

Si A. &c. tunc sum, &c. parati sacramento recognoscere, si J. injuste & sine judicio levavit, vel prostravit quoddam stagnum in N. vel quoddam fossatum, vel quandam sepem, vel divertit cursum cujusdam aquæ in N. vel arctavit, vel obstruxit quandam viam in N. ad nocumentum, &c. in eadem villa, post primam, &c. unde idem A. queritur, quod juratores ass. quæ inter eos sum. fuit. & capta coram, &c. apud N. per breve nostrum falsum, &c. & interim, &c. & sum. &c. Et habeas, &c.

And it is a Rule in the Register, That in an attaint upon an Assize of Novel disseisin a certain day shall be set, as in an Assize, Die lune vel alio die in Crastin. vel in Octab. vel in quinden. Pasch. but it behoveth that the Tenant have Garnish out by 15 days in the Attaint, for the Statute doth not give lesser time, but only in Assize before the King.

And there is another form of the Writ, if the Assize be adjourned into the Common Pleas, and taken there before the Justices of the Common Pleas, and the same appeareth in the Register.

And another form is of the Writ of Attaint, where the Assize is brought against the Husband and Wife, and the Wife is received for the default of the Husband, and pleadeth and loseth by false Verdict.

And another form of attaint is, where the Tenant in the Assize pleadeth the Release of the Plaintiff, or of his ancestor in bar of the Assize which is found against them, upon a false Verdict.

And another Form of the Writ of Attaint is, where

the Verdict passeth by *Nisi prius* out of the Common Pleas.

F And another Form of the Writ of attaint is, where the Assize is summoned before certain Justices, and after it is taken before other Justices by a general Commission, and a false Verdict is given upon the same.

G And another form of the Writ is, If an Assize be summoned before divers Justices, and afterwards is taken by any of them by vertue of the Writ of *Si non omnes*, then the Party shall have a Writ of Attaint, rehearsing the whole matter.

H And if a man upon Verdict given in an Assize before the Justices of Assize sueth an attaint before the same Justices, or other Justices, he may have a Writ of association directed unto the same Justices before whom the attaint is laid: and the writ of *Si non omnes*, as he shall have in Assize, &c. who was Plaintiff there: And he shall have a Writ Patent directed unto him who is associate, &c. Which Writs do appear in the Register after the Writs of Assize of Novel disseisin.

But it appeareth by one Writ in the Register, that there was a Constitution made, which required, That the Assize and Jurors and certificate shall be taken before the Justices commonly assigned: By which it seemeth, That a man shall not have an attaint upon a false Verdict given in an Assize, but before the Justices of Assize, or before the Justices of the Common Pleas, if the Record be removed thither, or before the Justices of the Kings Bench, if the Record be removed before the King; and the form of the Writ such:

Rex dilect. & fidel. suis F. & G. de E. salutem. Licet nuper constituerimus vos Justic. nostros ad jurat. viginti & quatuor mil. capiend. quam J. quæ fuit ux. E. arrain. cor. vobis per brev. nostr. versu. E. quæ fuit ux. A. de L. ad convincend. jurator. Ass. no. diff. quæ inter ipsum A. & præf. J. & alios, &c. sum. fuit & capt. apud L. cor. dilectis & fidelibus nostr. R. & B. nup. Justic. nostris apud ass. &c. assign. per brev. nostr. de tenement. in S. Quia ea constitut. præd. facta fuit cont. form. statuti nostri apud Northampt. nup. editi, in quo continetur, qd. assise juratæ & certificationes cor. Justic. communiter assign. & non aliis capiantur: Quod quidem status. in omnibus & singulis suis articulis volent. inviolabiliter observari, Vobis mandamus, quod de captione juratæ præd. prætextu commiss. nostre sit fact. vos nullatenus intromittatis. Teste, &c. Quod quidem statut. fact. fuit Anno 2 Ed. 3. Regis Angl. cap. 2.

I By which it appeareth, That he shall not have a Writ of attaint by Commission, &c. before other Justices, but only before Justices of Assize, or of the Common Pleas, or Kings Bench, as before is said.

The form of the Writ of Attaint upon a Redist. is such;

X

REN

Writ of Attaint.

Rex Vic', &c. Si R. feceris, &c. tunc sum, &c. 24. legal. Milites, &c. usque ibi parati, &c. Si juratores per quos quedam inquisitio capta fuit coram E. tunc Vic. com. tui, & custod. placitorum coronæ nostr. ejusdem per brevis nostrum apud W. inter R. & præd. B. de quadam rediff. eidem R. per præf. B. fact. ut dicit. de uno mesuagio & 9 acr. terræ cum pertin. in W. falsum fecerunt sacramentum sicut idem R. nobis gravit. querend. monstravit, & interim diligenter inquiras, qui fuerint juratores illius inquisitionis, &c. & eos tunc habeas coram præf. R. & J. Et sum. præd. B. quod tunc sit ibi ad audiend. ill. recogn. & habeas ibi sum. &c.

vi. 8 Eliz.
Dy. 25.

And it seemeth, That this Writ of Attaint ought to be sued before the Justices of Assize of the said County, and that they shall have a Patent for the same directed unto them, and that the Record shall be brought before them. But if the Record be removed into the Common Pleas, then it seemeth he shall have his Attaint there.

And it appeareth by *Glanville*, That a man shall have an *K* attaint, and the manner how the Jurors shall be punished.

42 E. 3. 25.
8 H. 4. 23.
Gafcoigne.

And if any Jurors be convict of false Oath, they shall be *L* imprisoned, and then they ought to sue unto the King to pay a fine for their imprisonment, and when they are agreed with the King, they may sue a Writ for to remove the Record before the King in the King's Bench, and the Writ shall be such :

By this it appeareth that they shall not forfeit their Lands in Fee, as upon Premunire, but for their own lives by Br. Attaint 100 & 95. upon the Book of 22 E. 4. 1.

Rex dilectis E. & sociis suis, &c. salutem. Cum W. de M. & alii de falso sacramento per ipsos facto in quadam inquisitione capta apud W. coram W. de B. & sociis suis nuper Justic. Dom. Regis, &c. de Banco per breve nostrum inter R. peten. & W. de M. teneant. de manerio de B. cum pertin. excepto uno gardino in eodem maner. coram dilectis & fidelibus nostris W. de B. & sociis suis, &c. de banco, per quandam juratam 24. convicti fuissent, & ea occasione prisonæ nostr. de Fleet adjudicat. ac bona & catalla sua, terr. & tenementa sua in manu nostra seiscita, Nos record. & processum negotii prædict. omnibus ea tangent. una cum corporibus præd. W. & aliorum coram nobis certis de causis venire fecimus, ac jam ex parte ipsius W. nobis est supplicat. & cum ipse in prisona hujusmodi occasione præmissorum jam diu detentus fuisset & adhuc existit, velimus ab eo rationabil. finem pro imprisonment illo, bonis & catall. ac terris & tenementis suis præd. ac etiam pro estrepamento terrarum & tenementorum prædict. recipere, ipsum a prisona, qua sic detinetur facer. liberar : Nos statui ejus compatiens in hac parte, ac volentes idem W.

gratiam

[110]

gratiam facere special. Vobis mandamus, quod visis record. & processu præd. & habita consideratione ad valorem bonorum & catall. terrarum & tenementorum præd. ac estrepament. eorund. rationabilem finem de eodem W. pro eo quod ad nos pertinet in hac parte recipiatis & ipsum W. à prisona, qua præmissa occasione detinetur deliberari, & ei bona & catall. terr. & tenement. sua in manu nostra existentia sic liberari faciatis per finem supradict. Teste, &c.

And thereupon the party shall be fined, as the Justices of the King's Bench will assess in their discretion; and upon that they shall grant a Writ to deliver his goods and his Lands, and for to deliver him out of prison, and the Writ shall be such :

43 E. 3. 26.
See Statutes
3 H. 8. ca. 15.

Rex Vic. &c. Cum W. de M. unus jurator. in quadam inquisitione capta apud W. coram W. de B. & sociis suis Justic. Dom. Regis, &c. (ut supra, usque ibi) Justic. nostris de banco per breve nostrum de falso sacramento per ipsum W. fact. per jurat. 24. Milit. convict. fuisset, & ea occasione prisona nostr. adjudicat. bona & catalla, necnon terr. & tenementa sua in manu nostra scisit. sunt, nobis constat per inspectionem record. & process. præd. que coram nobis venire fecimus, Ac idem W. postmodum venisset in Curia nostra coram nobis, & finem fecit nobiscum pro imprisonment prædicto, & terris & tenementis suis habendis: Tibi præcipimus, quod omnia terras & tenementa ipsius W. si ea occasione & non alia in manu nostra existent. eidem W. sine dilacione rehabere fac. & de corpore ipsius W. capiend. occasione præd. omnino supersedeas. Proviso tamen quod de valore terrarum & tenementorum prædictorum à tempore judicii super veredicto juratis prædict. redditus usque ad datum istius brevis, & etiam de estrepamento eorundem cum inde inquisit. fuerit, nobis respondeas, Teste W. Thorpe, &c. Anno 6 Rotul. 104.

A And there are divers other manner of forms of Writs of Attaint, which are not here mentioned, because a man may see them in the Register.

Writ of Oyer and Terminer.

B THE Writ of Oyer and Terminer should not be properly called a Writ; but it is a Commission directed unto certain persons, when a great assembly, insurrection or a hainous misdemeanor or Trespass is committed and done in any place. Then the manner and usage is to make such a Commission of Oyer and Terminer, to hear and determine such misbehaviour; and the Statute made 2 E. 3. c. 2. requireth That no Commission of Oyer and Terminer be granted but before the Justices of one Bench or other, or the Justices Itinerants,

and that for horrible Trespasses; and it is of the King's special grace, according unto the form of the Statute thereof made in the time of the Grandfather of the said King Edward; and the form of the Commission is such :

Rex dilect. & fidel. suis A. B. & C. salut'. Ex gravi querela D. accepimus, quod E. F. & G. ac quidam alii malefactores & pacis nostrae perturbatores in ipsum D. apud N. vi & armis insultum fecerunt, & ipsum verberaverunt, &c. ita quod de vita ejus desperabatur, & alia enormia ei intulerunt, ad grave damnum ipsius D. & contra pacem nostram. Et quia transgression. si aliter perpetrata fuerit. relinquere volumus impunitam : Assignamus vos & duos vestrum Justic. nostros ad inquirend. per sacramentum proborum & legalium hominum de Com. Lincoln. per quos rei veritas melius sciri poterit, de nominibus malefact. præd. qui una cum præf. E. F. & G. transgress. illam perpetrar. & de transgres. præd. plenius veritatem, & ad eandem transgress. audiendum & terminandum secundum legem & cons. regni nostri. Et ideo vobis mandamus quod ad certos dies & loca, quod vos vel duo vestrum ad hoc provideritis, inquisitionem illam faciatis, & transgress. illam audiatitis & terminetis in forma præd. fact. quod ad justitiam pertinet secundum legem & cons. regni nostri : salvo nobis amerciament. & aliis ad nos inde spectant. Mandamus enim vic. nostro com. præd. quod ad certos dies & loca, quos vos vel duo vestrum ei sciri fac. venire faciat. coram vobis vel duob. vestrum, tot & tales probos & legales homines de ball. tua, per quos rei veritas in præmissis melius sciri poterit & inquire. In cujus rei testimonium, &c.

[III.] And the Rule in the Register is, That if this clause, *Ac quid. alii malefactor. &c.* be not put into the Commission aforesaid, then in the end shall be this clause, *Per quos rei veritas melius sciri poterit, de transgr. præd. plenius veritatem ad eandem transgressionem, &c.*

And the form of the Writ which shall be directed unto A the Sheriff upon that Commission is such :

Rex Vic', &c. Ex gravi querela D. &c. (ut supra, usque ibi) assignavimus dilect', &c. A. B. & C. & duos eorum Justic. nostr. ad inquirendum per sacramentum proborum & legal. hominum, &c. (usque ibi) audiendum & terminandum secundum legem & cons. regni nostri. Et ideo tibi præcip. quod ad certos dies & loca, quos iidem A. B. & C. tibi scire fac. venire facias coram eis vel duobus eorum, tot & tales probos & legal. homines de balliva tua, per quos rei veritas in præmis. melius sciri poterit & inquire, & habeas ibi hoc breve, &c.

And the King may make a Writ of Association unto the B Justices of Oyer and Term. to admit them into their Company whom

whom the K. hath associated unto them, and the form is such :

Rex dilectis A. B. & C. Sciatis quod cum nuper ad querimoniam D. nobis suggerent. quod E. F. & G. quidam alii malefact. & pacis nostr. perturbatores, &c. (usque, &c.) impunitam : Assignamus vos & duos vestrum Justic. nostros, &c. (usque) ad audiendum & terminandum, secundum legem & cons. Assignavimus vobis vel duobus vestrum faciendum. Ita tamen quod si ad cert. dies & loca, quos vos vel duo vestrum ad hoc provideritis, ipsum H. adesse contigerit, tunc ipsum ad hoc in socium admittat. in forma præd. Mandamus enim eidem H. quod una vobiscum, vel duobus vestrum ad hoc intendat, sicut præd. est, Teste, &c.

And the form of the Writ of Association, which shall be directed unto him who shall be associated unto the Commissioners is such :

Rex dilecto & fideli suo H. salutem. Sciatis quod cum nuper ad querimoniam D. nobis suggerentis, quod E. F. & G. ac quidam alii malefactores, &c. assignavimus dilect. &c. A. B. & C. & duos eorum Justic. nostros, ad inquirendum, &c. (ut in patent. usque ibi) terminandum secundum legem, &c. Associavimus vos præf. A. B. & C. & duobus eorum ad præmiss. una cum eis vel duobus eorum faciendum ; ita tamen quod si ad certos dies & loca quos videm A. B. & C. vel duo eorum ad hoc providerint, vos adesse contiger. tunc vos ad hoc in socium admittant, alioquin A. B. & C. vel duo eorum (non expectata præsentia vestr.) ad præmiss. faciendum procedant. Et ideo vobis mandamus. quod ad præmiss. una cum præf. A. B. & C. vel duobus vestrum intendatis. in forma præd. facturum, &c. salvo nobis, &c. Mandamus enim eidem A. B. & C. quod vos ad hoc in socium admittant, sicut præd. est.

C And then the King may send another Writ unto the said Justices of Oyer and Terminer to proceed, although that all the Justices do not come at the day of the Sessions. And this Writ is called a Writ of *Si non omnes*, &c. and shall be directed as well unto that Justice as shall be so associate, as unto the other Justices of Oyer and Terminer, and shall be such :

D *Rex dilect. A. B. & C. & H. salutem. Cum nuper ad querimoniam D. nobis suggerentis, quod E. F. & G. ac quidam alii malefact. &c. (usq; ibi) contra pacem nostr. assignaver. vos præf. A. B. & C. & duos vestr. Justic. nostros, &c. (usq; ibi) audiend. & ad terminand. secund. leg. & consuetud. regni nostri, & postmodo associaver. vobis præf. A. B. & C. & duobus vestr. præf. H. ad præmiss. faciendum : Vobis mandamus quod si vos omnes præmiss. faciend. commode interesse non possitis, tunc vos tres vel duo vestr. quos præsent. esse contiger. ad præmiss. fac. secund. legem, &c. procedatis Teste, &c.*

And if the King made Commissioners of Oyer and Terminer A, B. and C. and afterwards by another Writ doth as

associate unto them *J. of H.* who is admitted, &c. and afterwards *J. of H.* dieth. The King may make a new association of other persons to the first Justices; so that association shall be made and granted after association; and he may make association of two or three persons unto the first Commissioners, or to those of them who are living to continue the proceedings, and to proceed to hear and determine the whole matter, and that they do admit those he doth associate, or two or any of them to proceed upon the whole matter, and such Writ is in the Register: and by that it appeareth, That by the death of any of the Commissioners, the matter shall not be discontinued: and the writ of association shall be patent, and the writ directed to the Justices of *Oyer and Terminer* to admit the others in their society shall be close.

And if a Trespass be done unto one in the confines of two Counties, then the party may sue a Commission of *Oyer and Terminer* directed to certain persons, to hear and determine the matter, and the form shall be such:

Rex dilectis, &c. Ex gravi querela D. accepimus, quod G. bona & catall. ipsius D. ad valenc. centum librarum apud M. R. & N. que sunt in confinio Com. Norff. & Suff. invent. vi & armis cepit & asportavit, &c. (usque ibi) Justic. nostri ad inquirendum per sacramentum proborum & legalium hominum de Com. præd. per quos, &c. Mandamus enim Vicecom. nostris Com. præd. quod ad certos dies & loca, in confinio Com. præd. quos, &c. coram eis in confinio eorund. Com. tot & tales probos & legales homines, &c.

And the Writs directed unto the Sheriffs of two Counties shall be Close.

And a Commission of *Oyer and Terminer* was granted upon a Rescous made upon the King's Bailiff where he distressed for Debts or Amercements to the King, and Rescous was made upon him.

And the King may grant certain Commissions *de Oyer & Terminer* of divers Trespasses done by any person at the suggestion of divers persons, without nominating any in the Commission, and then the form of the Commission beginneth in this manner:

Rex dilectis, &c. Ex clamoris querimoniis diversorum hominum de Com. N. ad nostrum sæpius pervenient. audit. quod A. Episcopus Wint. &c. plur. & diversas oppress. &c. And he shall have the like Writ unto the Sheriff to return the Panel.

And if a man have goods and merchandise in any Ship upon the Seas, which Ship is broken by Tempest, and the goods cast upon the Lands, these are no Wrecks, because certain persons came alive to the Land, and the Merchandise

ses or goods are taken by malefactors unknown, &c. The party may have a Commission of Oyer and Terminer, directed unto certain persons to enquire of those who did the Trespas, and to hear and determine the same, and to make restitution unto the party, and a Writ unto the Sheriff to return *probos & legales homines*, &c. before the said Justices, &c.

D And a man may have Commission of Oyer and Terminer, to enquire of Extortions, Oppressions, and other misdemeanors of Under-Sheriffs, Escheators, Bayliffs, Clerks of the Market, and all other Officers, upon the complaint and suit of any one that will sue, and a Writ unto the Sheriff to return a Jury before the said Justices.

E And also the King may direct his Writ unto the Sheriff, or unto Mayors or Bailiffs, to do as much as in them lieth and appertaineth to them, to remove such persons from their Office, against whom it is supposed that any one will complain; Or that he doth not put such or such into any Office, until enquiry be made of their carriage and behaviour, &c.

F And if a man sueth a Commission of Oyer and Terminer against divers persons for taking of his Goods and Chattels, and when they have taken them, they wast, spend or eloyne them; Then the party who sued out the Commission shall have a Writ unto the Sheriff, reciting the matter, commanding him to stay the goods, and to put them into safe custody, until it be otherwise provided and adjudged by the Justices of Oyer and Terminer, or by other Justices to be after assigned. And upon that Commission of Oyer and Terminer, if it be found for the Plaintiff, the Justices may return the goods to the party, and give him damages, and therefore it varieth from the Action of Trespas sued before the Justices of the King's Bench, or the Common Pleas.

G And in the time of the vacation of a Bishoprick, if any person hunt in the Parks or Chases of the Bishop, the King may send his Commission of Oyer and Terminer to certain persons, to hear and determine and enquire thereof; and the Writ shall be such:

Rex dilect. &c. Sciatis quod assignavimus vos & duos vestr. Justic. nostros ad inquirendum, &c. de Com. &c. per quos, &c. qui malefactores & pacis nostre perturbatores parcos de S. H. & A. in Com. pradi. postquam ipsi ad manus nostras ratione instantis vacationis Episcopatus Cicestr. dovener. vi & armis fruger. & in eis sine licentia & voluntate nostris fugaver. & feras ceper. & asportaver. & alia enormia nobis ibidem intuler. in nostri dispendium & contemptum, ac contra pacem nostram, &

Writ of Oyer and Terminer.

transgressionem præd. plenius veritatem, & ad transgressionem illas audiendum & terminandum, secundum legem, &c. Et ideo vobis mandamus, quod ad certos dies, &c. inquisic. illam fac. & transgressionem, &c. terminetis in forma prædicta, facturum, &c. Mandamus, &c. & inquiri, &c. Teste, &c.

And if in the time of the vacancy of the Archbishoprick, H any person doth hunt in the Parks, or cut down the Woods, or Fish in the Piscaries of the Bishop &c. when the Archbishop is created King, may send and grant the Commission of Oyer and Terminer, to enquire and determine the Trespass in the time of the vacancy; and the form of the Commission shall be.

Rex dilecti. &c. Ex gravi querela venerabilis Pastoris W. Ebor. Archiepiscopi accepimus, quod quidam malefactor. &c. parcos, &c. (and recite in the Commission all the Trespasses especially) & alia enormia, &c. in nostri contemptum manifestum, & deterior. Archiepiscopatus prædicti. & dicti Archiepiscopi grave damnum, & contra pacem nostram. Et quia contempt. transgressio. &c. im-punitos, &c. assignavimus vos, &c. (utque ibi) ad contemptum & transgressionem illas, tam ad sectam nostram quam præf. Archiepiscop. audiendum, &c. terminandum secund. legem, &c. Et ideo vobis, &c.

But it is to see how it standeth with the Statute of Marle-
bridge, that the Bishop shall have an Action and punish a
Trespass done in the vacancy of the Bishoprick: But it
seemeth it shall be so by these words in the Statute, *Quod si*
rapina aliqua facta sunt Abbatibus vel aliis Prælati Ecclesiasticis,
[113] *&c. And in the end of the Statute are these words, Si autem*
in terris & tenementis hujusmodi religiosor. de quibus eorum Præ-
lati obier. seistti, ut de jure Ecclesiæ sue, aliqui se intrudant tem-
pore vacationis, &c. And it seemeth these words hujusmodi
religiosorum, shall extend to Bishops: As much as to say,
the Bishop shall punish a Trespass done in time of vacation
of the Bishoprick, in cutting down of Trees, &c. for of
Right the King cannot cut such Trees; but for hunting in
the Parks, or fishing in the Piscaries it seemeth the King
ought to have the Action for the Trespass done in the time
of the vacancy; But if they do destroy all the Fish within
the Fishpools, or kill up all the Deer in the Parks in the
time of the vacancy, it seemeth reasonable, that by the
Statute of Marlebridge, the successor have an Action for
such Trespass: *Quere* of this matter.

And it is intended, That the King of right ought to keep and A
defend his Kingdom as well against the Sea, as against enemies,
that it be not drowned or wasted, and to provide remedy for
the

the same : And also to provide that his subjects pass by all ways through the Kingdom with safety; and therefore if the Sea walls be broken, or the Sewers or Gutters not scowred, so as the fresh waters cannot have their courses, the King ought to grant a Commission to enquire thereof, and to hear and determine the defaults; and the form of the Commission is such,

Rex dilect. A. B. & C. &c. Cum wall. fossata, guttura, suæ, pontes, calceta, gurgites. & trenchie in partibus Holland. inter crumem de W. et pontem de E. per impetum maris, & refluxus, ad inundationem aquarum dulcium per diversa loca in partib. præd. adeo diruta sunt & contracta, quod quamplurima damna & inestimabilia pro defectu reparationis earundem Wallarum, fossatorum gutturarum, suerarum, pontium, calcetor. & gurgitum, & obstructionem trenchiarum præd. temporibus retroactis evenirent ibidem, majoraq; processu temporis evenire timent, nisi super hoc celerius remedium adhibeatur opportunum. Nos pro eo, quod ratione dignitatis nostræ regię, ad providendum salvation. regn. nostr. circumquaq; sumus astricti. Volentes in hac parte congruum & festinum remedium adhiberi, assignavimus vos &c. ad supervidendum wall. fossata, guttura, sueras, pontes, calceta, gurgites et trenchias præd. & ad inquirendum per sacramentum tam Militum quam aliorum proborum & legalium hominum de partibus præd. tam infra libertates quam extra: per quos, &c. poterit, per quorum defectum huiusmodi damna contigerint ibidem, & quæ terras & tenementa tenent; seu communiam pasturam aut piscariam in partibus illis, vel etiam defensionem, commodum, & salvationem habent, vel qualitercunque per wall. fossata, guttura, sueras, pontes, calceta, gurgites præd. habere poter. sed etiam damna per trenchias prædict. sustinent vel sustinere poter. & ad omnes illos pro quantitate terrarum & tenementorum suorum, siue per numerum acrarum, siue per carucas pro rata portionum tenur. suæ seu pro quantitate commun. pastur. vel piscariæ suæ ibidem distringendum, & per amerciamenta & alio modo, prout melius videritis faciendum, puniendum una cum balliv. libertatum & aliorum de partib. illis ad huiusmodi wallia, fossata, guttura, sueras, pontes, calceta, et gurgit. in locis necessar. reparand. et quotiescunque, et ubi necesse fuerit de novo faciend. ac trenchias præd. in locis necessariis obstruend. ita quod aliquibus tenent. terrar. seu tenement. huiusmodi, seu communiam pasturæ, seu piscariæ habentibus, divit. vel pauper. aut alt. cujuscunque fuerit conditionis. status, aut dignitatis quam defensionem habere poterint qualitercunque per prædictam walliam, fossatum, guttura, sueras, pontes, calceta, et gurgites, seu etiam damnum per trenchias præd. sustinent. vel poterint sustinere, siue fuerint infra libertates vel extra non procedant. in hac parte: Et ideo

Writ of Oyer and Terminer.

vobis mandamus, quod ad certos dies & loca quos vos, &c. ad hoc provideritis præd. wall. fossata, guttura, fueras, pontes, calceæ, gurgites, & trenchas supervideatis, & præmiss. omnia & singula faciatis & expletis in forma prædicta, & omnia quæ per vos ordinari & fieri contigerit in hac parte, tam infra libertatem quam extra, faciatis firmiter observari. Mandamus enim vic. nostro Linc, &c. quod venire faciat, &c. tot & tales tam milites quam alios probos, &c. tam infra libertates quam extra, per quos rei veritas melius fieri poterit, &c.

And upon this Commission a Writ shall issue to the Sheriff rehearsing the whole matter in the Commission, commanding him to return a Jury, &c. as appeareth by the Commission. And if the Justices shall sit by vertue of that Commission, and take divers presentments and indictments, and award process upon them returnable at a certain day, and afterwards all the Justices or some of them die, the King may grant a new Commission to the Justices which are living only, or unto others, rehearsing the death of him who is dead, or of those who are dead, commanding them to continue the proceedings begun, and to proceed upon that process, and to hear and determine all these defaults and offences in the said Commission, the King reciting, that he hath sent unto the Executors, or those who died, to send all the Rolls, Records, and process before the new Commissioners. And upon that Commission, the King shall send a Writ unto the Executors of the Justices who are dead, to send the Rolls, Records and Process as aforesaid, forthwith under their Seals, and another Writ unto the Sheriff to make a Panel, and to return the same before the new Commissioners, and upon that Commission the Justices shall make a precept unto the Sheriff, that at a certain day and place he return before them the Panel according to their Commission, and that he be there before at the same day with the precept. And this new Commission shall be made as well to continue the suits and process betwixt party and party sued before the Justices of Oyer and Terminer, as well as the indictments and presentments made and found for the King. And the King may put into the Commission a command unto the said Commissioners, to receive the Records and the Rolls, and process of the said Executors. But see the Statute of Sewers and especially the Statute of King Henry the Eighth for that matter.

And if any English Merchants goods be spoiled, and his goods taken beyond the Seas by Merchants strangers, and the English Merchant was beyond Sea to have Justice and restitution

restitution made thereof and could not obtain the same, and this matter is testified unto the King in his Chancery. Now upon this Testimony, if the Merchants strangers shall come into any place within the Realm of *England* with their goods; then the English Merchant shall have a Writ out of the Chancery directed unto the Mayor or Bailiffs where such Merchant Strangers are with their goods, to arrest them and their goods, and to keep them under arrest untill they have satisfied the party his damages, which he hath sustained by reason of their misdoing. And may have divers Writs directed under divers Ports or Towns unto the Mayor or Bailiffs thereof to arrest such Merchants and their goods, and to detain them until they have satisfied the English Merchant for the Trespas which they have done unto him beyond the Seas. But it seemeth the English Merchant shall not have such Writ for any debt due to him by contract from a Merchant stranger upon a contract made beyond the Seas, if the Merchant do come into *England*, or his goods; *Quare tamen* thereof. And the King shall recite in his Writ which is directed unto the Mayor or Bailiffs, &c. how he hath sent the like Writ unto the Mayor or Bailiffs of such a Town, and another Writ unto the Mayor or Bailiffs of the other Town, in the like manner; and this Writ shall be sued to attach all those who did the Trespas, and their goods unto the value of the Trespas, which he supposeth he was endamaged.

C And if certain persons ought to accompt unto a Corporation, as if the King grant, to the honest men of the Town of *N.* a certain sum, out of things which come to the same Town to be sold, and there are Collectors to gather the same, who do so; The King may grant a Commission to certain persons, to enquire what persons have received such sums, and to hear and determine the matter, and to hear their accounts thereupon, and do in that case as Auditors shall do, and he shall send a Writ unto the Sheriff to return a Jury before the same Justices at the day, &c. which they appoint, &c. to enquire thereof, and the Commission is in the end of the Writ, *Ex parte talis*, and before the Writs of Debt, in the Register.

18 E. 4. 1.
Conspiracy
against two,
one dieth,
pendant the
Writ, per

Curiam the Writ shall not abate, and note by *Finchden* 44 E. 3. 32. that one shall answer if he appear.

Writ of Conspiracy.

1 Statute
13 E. 1. de
Conspirationibus.

Vi. after E.
F. G. Conspiracy shall be
against one,
& a contr.

Note if the
Action be
brought a-
gainst divers,
and all but one
are discharged
by matter in Law.

A Writ of Conspiracy lieth where two, three or more persons of malice and covin do conspire and devise to indict any person falsly, and afterwards he who so indicted is acquitted, now he shall have this Writ of Conspiracy against them who so indicted them. But this Writ lieth against two persons at the least who do so conspire, for if one person of malice and false imagination do labour, and cause another falsly to be indicted, the party who so is indicted shall not have a Writ of Conspiracy, &c. but an Action upon the Case against him who so caused him falsly to be indicted.

and all but one are acquit, the Action faileth 28 Aff. 12. so if all but one are discharged by matter in Law.

If two men conspire to indict another, and afterwards he is indicted, for which he bringeth appeal upon the same indictment, and after is nonsuit upon his appeal after declaration or before declaration, the party who was falsly indicted shall have a Writ of Conspiracy, because he is arraigned after the declaration upon the Appeal, and is acquitted, and before the declaration upon nonsuit he shall be arraigned upon the indictment, and if he be acquit, he shall have a Writ of Conspiracy, &c. But if he be falsly indicted, and after an Appeal is sued upon that indictment, and he put no answer unto the Appeal, and afterwards is acquitted by verdict upon the Appeal, he shall not have a Writ of Conspiracy in that case, because he is acquit upon the Appeal, and not upon the indictment, &c. But upon nonsuit in the Appeal a Conspiracy doth lie for the cause before mentioned.

34 H. 6 9.
per Prisot.
Note, this
case proves
that Conspiracy
lieth as well
upon Appeal as
indictment
for he is arraigned
upon the ap-
peal, Stamford 172.
that is indicted at the suit of the King, 19 E. Fitz. Conspir. 12. 5
E 3. ib. 22.

5 E. 3. Con-
spiracy 22.
13 E. 3. Con-
spiracy 25.
the abettors
shall not be
enquired of
but where
the abet-
ment is
found by en-
quest.

And if two conspire to cause a man to sue an Appeal against another of felony or murder without any indictment taken or found thereof, and after the defend. is acquit by verdict, he shall not have a Writ of conspiracy against those who conspired to appeal him, because that by the Stat' of West. 2. cap 12. *Quia multi per malitiam*, it shall be enquired of abettors, if he be not indicted thereof; and if they be found, he shall have a *Sicere facias* against them out of the same Court where he is acquitted, to answer him his damages. And so if he get a nonsuit in any such appeal, where there is not any indictment, the defend. shall have a Writ of Conspiracy after

Writ of Conspiracy.

253

after the nonsuit or after the acquittal: But the form of the Writ of Conspiracy where he is acquit by verdict, doth vary in words in the end from the Writ of Conspiracy which is founded upon the Plaintiffs nonsuit in appeal, for one Writ founded upon the verdict is, *Quousque secundum legem*, &c. *acquietatus fuisset*. And the other Writ of Conspiracy founded upon the Plaintiffs nonsuit is, *Quousque idem querens per considerationem Cur. nostr. inde quietus recessit*. The form of which Writs follow.

Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. & C. quod sint coram nobis, &c. Ostens. quare conspir. inter eos apud N. prehabita pref. A. de quodam jumento furtive apud N. capto & abduco indictari, & ipsum ea occasione capi, & in prisona nostra Warr. quousque in Cur. nostr. coram dilectis & fidel. nostr. R. & S. Justic. nostris, ad Gaol. nostram Warr. deliberand. assign. secundum legem & consuetud. regni nostri acquietatus fuisset, detineri falso & malitiose procuraver. ad grave damn. ipsius A. & contra form. ordinat. in hujusmodi casu provis. Et habeas ibi nomina pleg. & hoc Breve. Teste. &c.

The other Writ founded upon Nonsuit in appeal is such:

Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. & C. quod sint coram nobis, &c. Ostens. quare conspir. inter eos apud N. prehabita pref. A. de mort. D. apud E. nuper interfecit. appellari & ipsum A. ea occasione capi & in prisona nostra de L. quousque in Cur. nostra coram nobis idem A. &c. per consider. Curie nostrae inde quietus recessit, &c.

A And if a man cause one as Principal to be appealed of Felony or Murder, and another as accessory to him and afterwards is nonsuit in his appeal, the accessory shall have a Writ of conspiracy as well as the principal.

And if the Principal and one is accessory to be indicted of Felony, and be taken and arrested, and the principal is indicted and acquitted, now by that the accessory is discharged, and the accessory thereupon shall have a Writ of Conspiracy against those who conspired to indict him, and the Writ in the end shall say, *Quousque idem (the Principal) secund. leg. &c. acquietat. fuisset, & idem (the accessory) quietus recessit*.

B And a man shall have a Writ of Conspiracy upon an indictment before any Mayor, Bailiff of any City or Borough who have Gaol-delivery within the City or Burrough if he be acquitted before them, &c. for that acquittal dischargeth

him of the Felony. But a Writ of Conspiracy doth not lie against the Indictors, &c.

D If Jurors be sworn to enquire, &c. and afterwards any of them is discharged by the Justices, he shall not be punished for

†

what

19 H. 6. 19.

& 4 H. 6. 23.

nul tiel re-

cord, is a

good reply

in conspira-

cy.

per considerationem

Cur. nostr. inde

quietus recessit.

The form of

which Writs follow.

Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. & C. quod

sint coram nobis, &c. Ostens. quare conspir. inter eos apud N. pre-

habita pref. A. de quodam jumento furtive apud N. capto &

abduco indictari, & ipsum ea occasione capi, & in prisona nostra

Warr. quousque in Cur. nostr. coram dilectis & fidel. nostr. R. & S.

Justic. nostris, ad Gaol. nostram Warr. deliberand. assign. secundum

legem & consuetud. regni nostri acquietatus fuisset, detineri falso

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sint coram nobis, &c. Ostens. quare conspir. inter eos apud N. pre-

habita pref. A. de mort. D. apud E. nuper interfecit. appellari &

ipsum A. ea occasione capi & in prisona nostra de L. quousque in

Cur. nostra coram nobis idem A. &c. per consider. Curie nostrae inde

quietus recessit, &c.

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And if the Principal and one is accessory to be indicted

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Conspiracy against those who conspired to indict him, and

the Writ in the end shall say, *Quousque idem (the Principal) secund.*

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who have Gaol-delivery within the City or Burrough if he

be acquitted before them, &c. for that acquittal dischargeth

him of the Felony. But a Writ of Conspiracy doth not lie

against the Indictors, &c.

D If Jurors be sworn to enquire, &c. and afterwards any of

them is discharged by the Justices, he shall not be punished for

what

21 E. 3. 19.

47 E. 3. 17. what he did when he was sworn : But if he do conspire af-
 27 H. 3. 2. ter, he may be charged for the same in a Writ of Conspiracy.
 20 H. 6. 5. And he who cometh into Court, and discovereth Felonies,
 & 35. and is sworn to give evidence to the Jury, is not chargeable
 35 H. 6. 14. in Conspiracy.
 & 19.

In a Conspiracy against two, one pleaded to the Writ, E
 14 H. 6. Con- and the other matter in Law, which is adjudged for him,
 spiracy 1. and the plea unto the Writ found by verdict against him
 who pleaded unto the Writ, the plaintiff shall have Judg-
 ment against him who pleaded to the Writ : But if both
 had pleaded Not guilty, and one had been found guilty,
 and the other not, there the Plaintiff shall not recover, for
 then he did not conspire as is supposed by the Writ. But it F
 may be that they did conspire in the case aforesaid, although
 that the matter in Law be adjudged for the Defendant. And
 if the Principal die before any verdict given upon the ac-
 quittal, or have a pardon and plead it, then the accessory
 shall not have a Writ of Conspiracy, because he is dis-
 charged by the death of the Principal, or by the pardon to
 the Principal.

Conspiracy
 against two,
 one is at-
 taint, the
 other makes
 default,
 Judgment

shall be against him. 24 E. 3. 34. but *quere* by *Stamford* 174. for 27 E. 3. it is holden
 that one shall not answer without the other.

If a man be falsely indicted of Felony, and afterwards by
 Act of Parliament a general pardon is granted of all Felo- G
 nies, the party now shall not have a Writ of Conspiracy,
 although he will plead unto the indictment and is acquit-
 ted, and will not plead the Act, &c. because his life was not
 in danger, and the Felony was discharged by the Act.

The Justices of Gaol-delivery arraign a prisoner for mur-
 ther within the year where an Appeal is depending against
 the same prisoner for the same murder, which they know,
 and yet they proceed and acquit him, he shall have a Con-
 spiracy, although he was not acquitted nor discharged of
 the Appeal ; See the Statute of *An. 3 H. 7. cap. 1* And before
 that Statute it was holden, 21 H. 6. by *Passon* and *Newton*,
 That he shall have a Conspiracy ; for they said that he
 should be hanged if he had been found guilty upon the ar-
 raignment on the Indictment. And so the Statute *de Conspi-*
ratoribus, temp. E. 1. which Statute doth not determine in
 what Cases a Conspiracy shall lie. But by the Statute of 4
 E. 3. *cap. 10.* which giveth the Justices of *Nisi prius* and of *Assie*
 power to hear and determine of Conspiracies, Confederacies
 and Champerties, which they cannot determine in short
 time, they adjourn them in *Banco*, and shall be there deter-
 mined. And

21 H. 6. 28.
 29. 17 Aff.
 1. Br. Ap-
 peal 55.

Rastal *N. fi.*
prins 5. and
 note that
 before that
 Statute, they
 cannot ar-
 raigh them
 at the Kings
 suit.

And if a man be indicted or appealed of Treason or Felony or a Trespass done in a Foreign County, &c. if he be acquit thereof, he shall have a Conspiracy against him who procured him to be indicted or appealed, and shall recover treble damages by the writ upon the Statute of 8 H. 6. c. 80.

And if a man be indicted of Felony or Treason, where there is not any such place within the County, he shall have Conspiracy, and recover his damages against the Abettors and Procurers or Conspirators by the Statute of 18 H. 6. cap. 12.

And the form of the Writ for the accessory in a Writ of Conspiracy is.

Quare conspiration. &c. præf. A. de eo quod ipse abettasse & procurasse debuisset D. quæ fuit uxor E. F. & G. de morte ipsius E. quondam viri sui appellari coram J. & sociis suis nuper Justiciar. nostris ad appellum illud audiend. & terminand. indict. & ipsum ea occasione capi & imprisonari, & in prisona nostra Linc. quousque coram præf. Justic nostris inde, secundum legem & consuetud. regni nostri acquietatus fuisset, &c. [116.]

A And there are divers other Writs of Conspiracy grounded upon Disceit, and Trespass done unto the party, which are properly Actions of Trespass upon the Case; as if two men do conspire to endite another man because he did not arrest a Felon, who passed by the Town of N. and because they caused him to be indicted and amerced in the Leet of R. and F. and took and imprisoned him for that amercement until he be acquit in the said Leet.

B And if men say and affirm unto A. that he hath right unto such Land, and procure and cause him to sue an Action for the same against B. who is Tenant of that Land, &c. by which he is of necessity compelled to sell other Lands or Tenements for the defence of his Land, &c. now he shall have an Action against those who procure or conspire to cause A. to bring this Action, &c.

C And if two men procure or cause one to be indicted for hunting in another's Park, for which he is taken, imprisoned and put to charges until he hath acquitted him of the Trespass, he shall have a Conspiracy against them.

D And Conspiracy shall be maintainable against those who conspire to forge false Deeds which are given in Evidence by which his Land is lost. 46 E. 3. 20. 39 E. 2. 13. Fitz. Con-

E Conspiracy shall be maintainable against those who conspire to bring an Assise in the name of the Plaintiff against a Def. and to make one attorney for the Plaintiff, in which Assise the Plaintiff was found Villain, &c. now he may bring this Writ of Conspiracy. 42 E. 3. 14. And

3 Aff. 13.

11 H. 7. 25.

And Conspiracy shall be maintainable against those who^F conspire to endite one of Trespas, &c. whereof he is acquitted, &c.

And Conspiracy shall be maintainable, because the Def.^G made one to present in the name of the Plaintiff unto an Advowson, and for that presenting unto the Bishop who is^H admitted and instituted, &c.

47 E. 3. 15.

but the office ought to be sufficient

If one conspire to cause a false Office to be found of my^H Land, which is found by his procurement, &c. I shall have a Writ of Conspiracy.

be sufficient

In a Conspiracy against two, one justifies because he was^I then Justice by Commission, when the Plaintiff was indicted before him, &c. and for any conspiracy before, he pleaded Not guilty.

3 H. 4. 6.

11 H. 7. 26.

And a Writ of Conspiracy for enditing of Felony doth^K not lie but against two persons at the least; but a Writ of Conspiracy, for endicting one of Trespas or other falsity made, as in the Cases aforesaid, lieth against one person only.

23 E. 3. 1.

And a man shall not have a Writ of Conspiracy for indicting him of Felony against Husband and Wife, because they are but one person; but against Husband and Wife and a third person it well lieth.

But if the Writ of Conspiracy be brought against two,^L then it shall be said properly a Writ of Conspiracy. But if it be brought against one person only, then it is but an Action upon the Case upon the falsity and deceit done, because one person cannot conspire with himself.

9 H. 6. 30.

12 H. 6. 49.

And the Writ of Conspiracy may suppose the conspiracy^M to be in two several places, and shall be good; and the Writ ought to be brought in the County where the Conspiracy is made, and not where the Indictment was, or where the deed was done, &c.

There is also another Writ of Conspiracy which is given^N upon the Statute called *Ariculi super chartas*, 28 E. 1. cap. 10. which Writ shall be directed unto the Justices of Assize to enquire of the Conspiracy; and the Writ shall be such:

Rex dilectis & fidelibus suis W. de S. & sociis suis, &c. assign. salut. Cum inter ceter. articulos, quos dominus Edw. quond. Rex Angl. avus nostr. ad amendac. status populi sui concessit, ordinat. sit, quod de Conspiratoribus, falsis informatoribus & malis procuratoribus duodenar. inquisitionum. assisarum & juratorum Justic. de utroq; banco, & Justic. ad ass. capiend. assign. cum in patriam venerint ad officium suum faciend. faciant inquisitionem ad cujuscunque querelam sine brevi, & sine dilati- one, & faciant. Justic. conquerenti, prout in articulis præd. plenius continetur;

continetur : Nos dictos articulos in omnibus inviolabiliter observari volent. vobis mandamus, quod inspecta ordinat. præd. ult. ad prosecution. omn. & singul. coram vobis conquer. volent. faciât. quod secund. formam ordinac. præd. fuerit faciend. Teste, &c.

- O And upon that he shall have an *Alias* and a *Pluries*, and Attachment against the Mayor or Sheriff, &c. if they do not according to the Writ sent unto them, or return the cause why they cannot do the same; and it seemeth reasonable that the party in prison should have an Action upon that Statute against the Recognisor, if he find him not bread and water in prison, &c. according to the Statute.

Writ of Account.

- P A Writ of Account lieth divers ways; for if a man make one his Bailiff of his Mannor, &c. he shall have a Writ compt 8. of Accompt against him as Bailiff.

And if a man make one his Receiver, to receive his Rents or Debts, &c. he shall have a Writ of Accompt against him as Receiver. 6 R. 2. Bell. Accompt 47. 14 H. 4. 20

And if a man make one his Bailiff, &c. and also his Receiver, then he shall have an accompt against him as Bailiff, and also as Receiver.

- Q A man shall have a Writ of Accompt against one as Bailiff or Receiver where he was not his Bailiff or Receiver; for if a man receive Money for my use, I shall have an Accompt against him as Receiver; or if a man do deliver money unto another to deliver over unto me, I shall have an accompt against him as my Receiver. [ii-] 29 H. 6. Fitz. Accompt 6. 16 H. 6. 10. 10 R. 2. Accompt 4. de.

- A And so if a man enter into my Land to my use, and receive the profits thereof, I shall have an accompt against him as Bailiff.

- B And so if the Father doth occupy the Land of an Infant, which the Infant hath purchased or hath by purchase, the Infant shall have an account against him as Bailiff of his Lands; and this Writ of accompt may be sued as well in the County as in the Common Pleas. VI. 41. E. 2. 21. Thorpe

- C If a man have cause to have an accompt against one as Bailiff or Receiver, if he die his Executors shall have the Action: But an accompt doth not lie against the Executors of a Bailiff or Receiver, for the Receipt or occupation of their Testator. And the Writ of Accompt which shall be sued in the County, is a *Justicies* directed unto the Sheriff, which is such. 19 E. 3. Fitz. Accompt 6. the writ of Accompt is given to Executors by Statute and was not at the common Rex Law.

Writ of Account.

Rex Vic. Linc. sal. Præc. tibi, quod Justic. A. quod juste & sine dilatione reddat B. rationabile computum suum de tempor. quo fuit balli. suis in N. & recept. denar. ipsius B. sicut rationabiliter monstrar. poterit, quod ei redd. debet, ne amplius inde clam. audiamus pro def. & tu justitiæ. T. &c.

And for Executors the Writ is ;

Quod redd. B. & C. exec. testamenti D. rationabil. comput. suum de tempor. quo fuit ball. ipsius D. in N. & ipsius defuncti, sicut ration. monstrare poterit.

If two Merchants occupy their goods and Merchandises D in common unto their common profit, one of them shall have an Action of Accompt against the other in the County or in the Common Pleas ; and the Writ in the County shall be ;

Two purchase a Manor for life, and one taketh upon him to be Bailiff to the other, no accompt lieth by 8 E. 2. Accom. 115. & 21 E. 3. ib. 66. 30 E. 1. Accompt 127. Note, that in a Writ. which supposeth that

Rex Vic. &c. Præc. tibi quod Justic. A. mercator. quod juste redd. mercat. rationabil. comput. de tempor. quo fuit recept. denar. ipsius B. ex quacumq; causa & contractu ad communem utilitat. ipsorum A. & B. proven. sicut per legem mercator. rationabiliter monstrar. poterit, quod ei redd. debet.

And this clause *Ex quacumq; causa & contractu*, ought to be put in every such Writ, whether it be sued in the Common Pleas or in the County.

And the Executor of one Merchant shall have such Writ E against the other Merchant, but not against his Executor ;

Rex Vic. &c. præc. A. quod redd. B. rationabil. computum de tempore quo fuit receptor denarior. ipsius A. vel ballivus i suis A. in N. & nisi fecerit, & præd. A. fecerit te secur. de clamor. suo prosequendo, tunc sum præd. B. quod sit coram Justic. nostris apud Westm. in Quindena Pasc. &c. ostens. quare non fecerit, & hab. ibi sum. & hoc breve, &c.

de tempore quo fuit receptor denariorum ; the def. shall not say, that he hath accompted from such time to such time, but ought to shew certain for what things he hath accompted. *Contra* where the Writ is, *atempore quo fuit Ball.* 3 E. 3. Accompt 61.

14 H. 4. Accompt 124. 4 E. 2. 17. ib. 97. 31 E. 3. Accompt. 57. 25 E. 3. 45 in the like Action the def. said that he was not receiver of the predecessor, and admitted good. 20 E. 3. Accompt 78. Accompt lies against an Abbot notwithstanding the receipt was by the predecessor.

And a Prior or Abbot or Master of an Hospital shall F have a Writ of accompt against him who was Receiver or Bailiff in the time of their predecessor, and the form of the Writ shall be such :

Præc. A. quod reddat I. Priorissæ de S. rationabil. computum de tempore, &c. ball. Aliciæ quondam Priorissæ de S. predecess. præd. I. & recept. denar. ipsius Aliciæ Priorissæ, &c.

And another Writ thus, *Præcipe A. quod reddat.*

And

And another Writ thus, *Præc. A. quod redd. communitati*
will de W. rationabil. compotum suum de tempore, &c. quo fuit
receptor denar. ipsius communitat. in W. Et nisi, &c. Et præd.
communitat. &c.

G And note that the Writ of Accompt sued in the County
 may at the suit of the Plaintiff be removed into the Com-
 mon Pleas by a *Pone* without any cause shewed in the Writ,
 but shall not be removed out of the County by the Defen-
 dant without cause shewed in the *Pone*, &c. As if the Defen-
 dant plead a foreign release, then it shall be said in the *Pone*,
Quia prædict. defend. in placitand. in Cur. nostra in N. in qua
loquela pendet per return. brevis nostri protulit quoddam scriptum
acquietantiæ sub nomine ipsius A. continens in se præf. A. omnes
acc. quas versus præf. B. def. ratione compoti præd. habuit, eidem
B. remississe in Com. Linc. fact. ut dicitur, quod quidem scriptum
præf. A. omnino deduxit, propter quod loquela illa in Cur. præd.
ulterius deduci non debet, fiat executio istius brevis, si causa sit
vera, & aliter non.

H There is another manner of Writ of Accompt founded vi. 4. E. 2.
 upon the Statute of *Marlebridge, cap. 23.* And that Writ lieth Br. 791.
 where a man ought to make accompt as Bailiff or Receiver, where it is
 and hath no Lands nor Tenements by which he may be holden, if he
 distrained, but is vagrant in secret places, where he will not hath any
 be found, then the Plaintiff shall have a Writ of Accompt Land it is
 which is called *Monstravit* upon the Statute, and the Writ sufficient;
 is of this form: but there he
 had in the

Rex Vic. &c. Monstravit nobis Prior de N. quod cum A. extor-
trit ballivus suus in K. omnium rerum et honorum suorum cur.
habens administrationem, idem A. compoto suo non soluto subterfu-
gia querens, latitat in balliva tua, nec possit inveniri et distringi
ad reddend. præf. Priori compotum suum prædict. Et quia de com-
muni consilio regni nostri provisum sit: quod si ballivi, qui admi-
nistr. suis compotum suum reddere tenentur, se subtraxerint, et ter-
ras vel tenementa non habent per que distringi valeant per eorum
corpora, attachientur: Ita quod Vicecom. in quorum ballivis in-
venient. eos venire fac. ad compot. suum redd. Tibi præcipimus,
quod si præd. Prior fecerit te secus. de clamore suo prosequendo, tunc
præf. A. attach. ita quod cum habeas coram Justic. &c. tali aie,
ad reatend. præf. Priori compotum suum præd. sicut rationabili-
ter monstrare poterit, quod ei reddere debet, &c. et habeas ibi,
&c.

But this Writ is not now in use, because that by the Sta- [118.]
 tute of *West. 2. cap. 12.* made after the Statute of *Marlebridge*,
 process of Outlawry is given in a Writ of accompt against
 Bailiffs and Receivers; But yet he may sue a *Monstravit*

at this day if he will: and the form of the Writ of *Monstravit* directed unto the Sheriffs of London is such:

Rex Vic. Lond. salut. Monstravit nobis A. quod cum B. existerit receptor denarior. A. ipsius & ball. suus in N. idem B. compoto suo non solut. interfugia quarens latitat in Ball. vestra, &c. Et quia &c. vobis precipimus, quod si præd. A. fecerit vos secur. de clamor. suo prosequendo, tunc præd. B. a tachiat, ita quod eum habeatis coram Majore civitatis nostr. Lond. & vobis in proxim. Hustingo vestro Lond. ad reddend. præf. A. compotum suum præd. sicut, &c. Et habeatis, &c.

And the Receivers and Bailiffs may be put in one Writ in the *Monstravit* thus, *Receptor denar. ipsius A. & ball. suus in N.* But if the Writ be sued in the Common Pleas, then the Bailiff must be put, *Sicut ball. suus & receptor denarior. ipsius A. in N.*

See that in
accompt a-
gainst one as
Bailiff and

And a Writ of Account lieth against Gardian in Socage; A but the form of the Writ doth vary from the form of the Writ against the Bailiff, &c. and the form is such:

Receiver, the Defendant said, that he was Gardian in Socage and not Bailiff, and good; per 32 E. accompt 60.

Rex Vic. &c. Si A. fecerit, &c. tunc sum. &c. B. quod sit coram Justic. &c. ostens. quare cum de communi consilio regni nostri provis. sit, quod custodes terrarum & tenementor. tenentur in socagio hired. terrarum & tenementorum illorum cum ad plen. atat. pervenerint, reddant rationabil. compotum suum de exitibus de terris & tenementis illis provenientibus de tempore quo custod. illam habuer. ratione minoris etatis hered. prædict. idem B. præf. A. rationabil. compotum suum de exitibus provenient. de terris & tenementis suis in N. quæ tenentur in socagio, & quorum custod. idem B. habuit dum præd. A. infra atat. fuit, reddere cons. ut dic. & ideo, &c.

Notwith-
standing
that he be
no Gardian
in droit, if
the Defen-
dant hath the

occupation or manurance of the Land, the action lieth, per 32 E. 3. accompt 59. Fitz. 27.

Vi. old N. B. And if a man during the minority of the Heir enter into
9. and after the Land of the Heir which he hath by Descent, and take
149 B. for the profits to the use of the Heir, the Heir at full age shall
admeasure- have an accompt against him as Gardian for the profits re-
ment of ceived untill he come to the age of 14 years; and for the
Dower by profits received after the Heir come of the age of 14 years,
Infant. he shall have a Writ of accompt against him as Bailiff, and
16 E. 2. ac. not as Gardian, for he cannot be Gardian longer for Socage
compt 30. Lands but till 14 years of age: But the Heir shall not have
3 & 4. Mar. an Action of accompt against him as Gardian until the Heir
By 137. be of fullage of one and twenty years, and that by the words
of

of the Statute, which are *Qui cum ad etatem pervenerit*, &c. But he shall have an Action of accompt against him as Bailiff during his Nonage, at what time he will against him who taketh the profits of the Lands which he hath by Descent, be he gardian in Socage in Right, &c.

C And a Writ appeareth in the Register, That if a man be found in arrearages upon his accompt and the party Plaintiff do arrest him in *London* for those arrearages, then he may sue a Writ in Chancery directed unto the Sheriff rehearsing the whole matter commanding the Sheriff to detain and keep in prison him who is so arrested, until he hath satisfied and paid the arrearages. And it seemeth by the same reason, That if a man sue an Action of Debt upon arrearages of accompt before Auditors, and hath the party arrested. That he shall have a Writ out of the Chancery unto the Sheriff, to keep him in prison until he hath paid those arrearages, but I conceive this Writ doth not stand in Law, that he shall be kept in prison without answering unto the sute commenced against him.

D A man may have a Writ of accompt against a woman as *14 H. 6. 4.*
Receptrix denariorum, or against a Chaplain, but not against *16 E. 3. accompt 52.*
 an Infant.

E A man may have an accompt against one as Bailiff of a Court or Hundred.

F And a man shall have an accompt against a Prior upon a Receipt had by his Commoign, but there the Writ doth suppose that he himself did receive the money, &c. and shall not say, by the hands of his Commoign. And so a Receipt made by the Husband, by the Hands of his wife, is his own Receipt, and the Writ and the Count shall suppose that he himself did receive, &c. without saying by the hands of the wife: but it is otherwise if a Prior or Husband receive money of a stranger, then the Count shall be that he received by the hands of the stranger, &c. But the Writ shall be general, *Tempore quo fuit receptor denar*, without saying by whose hands, but he shall shew that in the Count or Declaration.

G And if a man deliver goods or money beyond Sea to deliver to to him again in *England* at a certain place, he shall have an account for those goods, &c. *41 E. 3. 9. 12.*

And if a man deliver money to one upon condition, that if he do such a thing, he shall have the money, if not, then he who delivered it shall have it again, if he perform not the Condition he shall have an account against him for the same. *41 E. 3. 10. 12 H. 4. 18. ac. 11. H. 4. 75. Skreen:*

If two have goods in Joynter, or in Common, and one of them deliver the goods to one to render account, he alone shall have an action for them. *21 E. 3. 20. compt. 66.*

43 E. 2. 21. If two have a Ward, and one take all the profits, the I
 45 E. 3. 20. other shall have an account against him, P. 45 E. 3.
 [119]

If the husband hath received the profits of the Wives A
 Lands, and die the Wife shall not have a Writ of account
 of the profits nor of the Rents, during the Coverture a-
 gainst the Husbands Executors.

4 E. 3. 17. If a Receiver or Bailiff make a Deputy, yet the action of B
 Fitz. accomt. account shall be brought against the Receiver or Bailiff
 97. themselves and not against their Deputies: for the Depu-
 ties receive the same to their Masters uses.

11 R. 2. He who is Surveyor or Controller of Lands, shall not be C
 accomt 48. charged in accompt.

4 E. 3.
 accomt 34. 12 E. 3. ibid. 75, & 13 E. 3. ibid. 76.

An Apprentice shall not be charged to accompt by a D
 6 E. 3. 3. ac- Writ of accompt: But the Master shall have a Writ of ac-
 compt 102. compt against a Servant who is sent to receive money, &c.
 8 E. 3. acc. 94 if he be receiver.
 Vi. accompt
 as Receiver, the Defendant said that he was his Apprentice, and no Plea, but he was
 forced to answer to the Receipt.

The Parish priest shall not be charged for the Offerings E
 offered by a Writ of accompt, if it be not otherwise agreed
 betwixt them, &c. For the Clerk holds the vessel in which
 they are put.

If the King grant unto a Town the Toll of the things F
 sold in the same Town for the walling of the Town, and
 other necessary things in the Town, and there be Collectors
 to receive the same, if the Collectors will not render account
 thereof, they may have a Commission out of the Chancery
 to enquire of the Receipt of the Toll money, and the Re-
 ceivers, and to hear and determine the same, and to hear
 their accompts, and a Writ of attendance unto the Sheriff,
 to return a Jury before the Commissioners.

Writ of Debt.

C. 5. pa. 79. A Writ of Debt properly lieth where a man oweth ano- G
 10 H. 6. 7. ther a certain sum of money by obligation, or by bar-
 Debt per A- gain for a thing sold, or by Contract, or upon a Loan made
 mercement by the Creditor to the Debtor, and the Debtor will not pay
 in Leet. the Debt at the day appointed that he ought to pay it, then
 22 H. 6. 56.
 13 H. 7. 3. in debt against Successor upon Acc. to his Predecessor which comes to the use
 of the house, the Writ shall be in the Debt.

the

the Creditor shall have an Action of Debt against him for the same; and it may be sued in the County before the Sheriff by Justices, as well as in the Common Pleas; and the form of the Writ is sometimes in the *Debet & Detinet*, and sometimes in the *Detinet* only, and not in the *Debet*, and if it be in the *Debet* it shall abate. It shall be always in the *Debet* and *Detinet*, when he who makes the bargain or Contract, or lends the money, or he to whom the Bonds is made, bringeth the Action against him who is bounden, or party to

H the Contract or bargain, or unto the lending of the money: and money delivered by the Writ. But if a man sell 20 quarters of Wheat, or a Horse; if he bring Debt for the Horse, the Writ shall be in the *Detinet* only, and the form of the Writ sued in the County before the Sheriff for money, is such: In Debt against husband and Wite for a Debt before Coverture,
the Writ shall be *Debet & Detinet*, so in Debt against or for the Successor in respect of Obligation made to the Predecessor, 47 E. 3. 23. 40 E. 3. 16. 9 E. 4. 41. 47 E. 3. 23. If the Heir be to bring Debt, it shall be in the *Detinet*.

Rex Vic. Surr. salutem. Præcipimus tibi, quod Justices A. quod juste & sine dilatione redd. B. 20 s. qu' ei debet ut dic. sicut rationabiliter monstrare potest, quod ei redd. debet ne amplius inde clamorem audiamus pro defectu justitiæ, &c. Teste. &c.

I And if the Writ of Debt be for other goods or Chattels than money, then the Writ of Debt shall be such:

Rex Vic. &c. Præcipimus tibi, quod Just. A. &c. quod redd. B. quendam librum, vel quendam cyphum, vel quendam equum, vel duos agnos pretii, &c. quem vel vos vel quæ ei injuste detinet sicut, &c.

K And if a Writ of Debt be brought in the County before the Sheriff by Justices, the Plaintiff may remove the Plea unto the Common Pleas by a *Pone*, without shewing cause in the Writ: but the Defendant shall not remove the Plea out of the County without shewing cause in the *Pone*, and yet in the end of the Writ it shall be said. *Fiat execut. istius brevis, si causa sit vera, aliter non.* And the causes wherefore the Defendant may remove the Plea, are many, as appeareth in the Register. One, if the Defendant plead a foreign Plea, which cannot be tried in the County, &c. Or if the Defendant shew that he before whom the Plea is depending, doth maintain the Plaintiff, or favour him, &c.

And if the Plea of debt be sued within any Liberty, or Court of any Borough or City, &c. the Plaintiff may remove the Plea by a *Recordare* into the Common Pleas without shewing any cause in the Writ. But if the Defendant sue to remove the Plea by a *Recordare* into the Common Pleas, out

of any Town or City, he ought to shew cause in the Writ, as before is said. And if the Sheriff remove the Plea out of the Court by a *Pone* at the Suit of the Defendant or Plaintiff, and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgment and award Execution, &c. then the Def. or he against whom the Judgment is given, and Execution awarded, shall have an Attachment against the Bailiffs, or those who so proceeded to Judgment, &c. to answer as well the K. for the contempt, as the party his damages, &c. And the form of the Writ of Debt in the Comm. Pleas is:

Rex Vic. &c. Præcip. A. quod iuste, &c. redd. B. C. s. quos ei debet & iniuste detinet ut dicit. Et nisi fecerit, & præd. B. fecerit, &c. tunc sum. per bonos sum. præd. A. &c.

29 H. 8. 8.

And the rule in the Register is, *Quod in brevi de debito de catallis nunquam dicit. quod ei debet.* And if the Debt be brought by Executors for a Duty due to their Testator, the Writ shall be *Quos ei detinet*, and not *Debet & detinet*, because they were not parties to the Contract. And so if Debt be brought by the Creditor against Executors for the Debt of the Testator, the Writ shall be, *Quos ei detinet*, &c. and not *Debet & detinet*, although by the Writ he demand money, viz. 20 l. or other sum of money.

[120.]

If a man make B. and a Monk his Executors, and is indebted unto another, the Action of Debt shall be brought against B. and the Abbot and the Monk, and the form of the Writ shall be such:

Præcip. B. execut. testamenti S. & Abba'i de C. & frat. A. de C. concanonico ejusd. Ab. de C. coexecut. præd. B. testamenti præd. 20 l.

Joinder in

action 75.

H. 7. 8. K.

A lease for

years to a

secular man

and an Ab-

bot. quare,

how they

hold See 15

Eliz. Plow.

441.

the heir of

the heir shall

be charged.

And if they bring an act the Writ shall be: *Præcip. D. &c. qd. redd. B. execut. testamenti S. & Abbat. de C. fratri A. de C. concanon. ejusdem Abbat. de C. coexecut. præd. B. testamenti prædict.*

And if a man be bound unto B. and an Abbot in 20 l. B. and B. dieth, his Executors and the Abbot shall joyn in the Action of Debt and the Writ shall be such:

Præcip. C. &c. quod iuste, &c. redd. B. & M. execut. testamenti R. & Abb. de C. 10 l. &c. quas, &c. Et nisi, &c. & præd. execut. & Abb. fecerint te, &c.

And if a Writ of Debt be brought against the Heir upon an Obligation of his Ancestors, the Writ shall be such:

Præcip. A. de S. fil. & her. B. quod redd. &c.

And if there be divers Heirs, then the Writ shall be:

Præcip. A. de S. fratri & uni her. d. B. & B. consanguineo & alteri hered. ejusdem B. &c.

And if a man be in debt, and die intestate, or the Executors refuse to be Executors, for which the goods come to the hands

hands of the Ordinary, the Creditors shall have an Action of Debt against the Ordinary by the Statute of *West. 2. cap. 19.* and the Writ shall be such :

Præcip. A. Episcopo Lincoln. ad cuius manum bona & catalla quæ fuer. B. qui obiit intestatus, ut dic. devener. quod iuste, &c. redd. &c.

And if the Goods come unto the hands of the Ordinary, and afterwards the Ordinary maketh Executors, and dieth, the Creditor shall have an Action of Debt against the Executors of the Ordinary, and the Writ shall be such :

Præcip. A. de B. & C. de T. execut. testamenti magistri R. de P. nuper Decani Ecclesie beati Petri Eborac. & custod. spiritualitatis Archiepisc. Eborac. s. de vacante, ad cuius manus bona & catalla quæ fuer. E. de B. qui obiit intestat. ut dicitur, devenerunt, quod iuste, &c. redd. &c.

And it appeareth by the Register, that in *Anno 16 E. 3.* the Plaintiff was answered unto such Writ which he brought against the Executors of the Ordinary.

And there is a Writ of Debt in the Register for the Ordinary, against him who was indebted unto him who died intestate. But the Opinion of the Sages of the Law at this day is, That the Ordinary shall not have an Action of Debt against those who were indebted to the intestate, because the action is given to the Administrator, and the Ordinary may commit administration of the Goods when he pleaseth. But before the Statute of *31 E. 3. cap. 11.* the Administrators could not have an action of Debt against the Debtors, wherefore it was then thought reason, that some person should have the action for those debts, &c. But the Ordinary at this day may have an action of Trespas for taking of the goods out of his own possession, but not for taking them out of his possession who died intestate as Administrators may have.

14 H. 4. 30.
so against
Guardian of
the spiritu-
alties.

E If a man be retained in *England* to do Service beyond Sea, receiving, *10 l. per an.* he shall have an action of Debt in *England* where the retainer was.

F If a man married a woman who is in debt to divers persons the husband and wife shall be sued for the debts, living the wife: but if the wife die, the husband shall not be charged for the debt after the death of the wife, if the creditor of the husband and wife do not recover the debt during the coverture, which was due by the wife before the overtire: for then, altho' the wife dieth, yet the husband shall be charged for that Debt by that recovery after the death of the wife.

48 E. 3. 1.

G A man shall be charged in debt for the Contract of his Bailiff or Servant, where he giveth authority unto his bailiff

*2 R. 3. Fitz
Deut. 3.*

or

of any Town or City, he ought to shew cause in the Writ, as before is said. And if the Sheriff remove the Plea out of the Court by a Pone at the Suit of the Defendant or Plaintiff; and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgment and award Execution, &c. then the Def. or he against whom the Judgment is given, and Execution awarded, shall have an Attachment against the Bailiffs, or those who so proceeded to Judgment, &c. to answer as well the K. for the contempt, as the party his damages, &c. And the form of the Writ of Debt in the Comm. Pleas is:

Rex Vic. &c. Præcip. A. quod juste, &c. redd. B. C. s. quos ei debet & injuste detinet ut dicit. Et nisi fecerit, & præd. B. fecerit, &c. tunc sum. per bonos sum. præd. A. &c.

29 H. 2. 2.

And the rule in the Register is, *Quod in brevi de debito de catallis nunquam dicit. quod ei debet.* And if the Debt be brought by Executors for a Duty due to their Testator, the Writ shall be *Quos ei detinet*, and not *Debet & detinet*, because they were not parties to the Contract. And so if Debt be brought by the Creditor against Executors for the Debt of the Testator, the Writ shall be, *Quos ei detinet*, &c. and not *Debent & detinent*, although by the Writ he demand money, viz. 20 l. or other sum of money.

[120.]

If a man make B. and a Monk his Executors, and is indebted unto another, the Action of Debt shall be brought against B. and the Abbot and the Monk, and the form of the Writ shall be such:

Præcip. B. execut. testamenti S. & Abba'i de C. & frat. A. de C. concanonico ejusd. Ab de C. coexecut. præd. B. testamenti præd. 20 l.

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And if they bring an act the Writ shall be: *Præcip. D. &c. qd. redd. B. execut. testamenti S. & Abbat. de C. fratri A. de C. concanon. ejusdem Abbat. de C. coexecut. præd. B. testamenti prædict.*

And if a man be bound unto B. and an Abbot in 20 l. and B. dieth, his Executors and the Abbot shall joyn in the Action of Debt and the Writ shall be such:

Præcip. C. &c. quod juste, &c. redd. B. & M. execut. testamenti R. & Abb. de C. 10 l. &c. quas, &c. Et nisi, &c. & præd. execut. & Abb. fecerint te, &c.

And if a Writ of Debt be brought against the Heir upon an Obligation of his Ancestors, the Writ shall be such:

Præcip. A. de S. fil. & hæc. B. quod redd. &c.

And if there be divers Heirs, then the Writ shall be: *Præcip. A. de S. fratri & uni her. d. B. & B. consanguineo & alteri hered. ejusdem B. &c.*

And if aman be in debt, and die intestate, or the Executors refuse to be Executors, for which the goods come to the hands

hands of the Ordinary, the Creditors shall have an Action of Debt against the Ordinary by the Statute of *West. 2. cap. 19.* and the Writ shall be such :

Præcip. A. Episcopo Lincoln. ad cuius manum bona & catalla quæ fuer. B. qui obiit intestatus, ut dic. devener. quod iuste, &c. redd. &c.

And if the Goods come unto the hands of the Ordinary, and afterwards the Ordinary maketh Executors, and dieth, the Creditor shall have an Action of Debt against the Executors of the Ordinary, and the Writ shall be such :

Præcip. A. de B. & C. de T. execut. testamenti magistri R. de P. nuper Decani Ecclesie beati Petri Eborac. & custod. spiritualitatis Archiepisc. Eborac. s. de vacante, ad cuius manus bona & catalla quæ fuer. E. de B. qui obiit intestat. ut dicitur, devenerunt, quod iuste, &c. redd. &c.

And it appeareth by the Register, that in *Anno 16 E. 3.* the Plaintiff was answered unto such Writ which he brought against the Executors of the Ordinary.

And there is a Writ of Debt in the Register for the Ordinary, against him who was indebted unto him who died intestate. But the Opinion of the Sages of the Law at this day is, That the Ordinary shall not have an Action of Debt against those who were indebted to the intestate, because the action is given to the Administrator, and the Ordinary may commit administration of the Goods when he pleaseth. But before the Statute of *31 E. 3. cap. 11.* the Administrators could not have an action of Debt against the Debtors, wherefore it was then thought reason, that some person should have the action for those debts, &c. But the Ordinary at this day may have an action of Trespass for taking of the goods out of his own possession, but not for taking them out of his possession who died intestate as Administrators may have.

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E If a man be retained in *England* to do Service beyond Sea, receiving *10 l. per an.* he shall have an action of Debt in *England* where the retainer was.

F If a man married a woman who is in debt to divers persons the husband and wife shall be sued for the debts, living the wife: but if the wife die, the husband shall not be charged for the debt after the death of the wife, if the creditor of the husband and wife do not recover the debt during the coverture, which was due by the wife before the overture: for then, altho' the wife dieth, yet the husband shall be charged for that Debt by that recovery after the death of the wife.

48 E. 3. 1.

G A man shall be charged in debt for the Contract of his Bailiff or Servant, where he giveth authority unto his bailiff

*2 R. 3. Fitz
Dett. 3.*

or

or Servant, to buy and sell for him: and so for the Contract of the Wife, if he give such authority to his wife, otherwise not.

If a man lease Lands for years rendring Rent, and for default of payment, that he shall re-enter; if he do re-enter in the Land for not payment of the Rent, yet he may have an Action of Debt for the Rent, for which he doth re-enter, and in the Writ shall recover the Rent, for which he re-entred.

If a man bind him and his Heirs unto another in 20 l. If and dieth the Heir shall be charged to pay the same, if he have Lands by descent in Fee-simple from his Ancestors, otherwise not. But if a man be bounden in an Obligation to one and his Heirs, and the Obligee dieth, his Heir shall not have an Action of Debt upon the Obligation, but his Executors.

17 E. 3. 43.
18 E. 3. Debt
6. 36 E. 3. 7.
Debt 10.

14 E. 3. Debt
135. A man
was bound
to one and
his Heirs,
and holden
the Heir
should not
have debt living the Executors. 9 H. 6. 58. the Heir shall not have Detinue for a Deed bailed by his Father, 19 H. 6. 4. 48 E. 3. 12. it is said that if the Ordinary do not commit administration, the Heir shall have Debt.

If any man promise to one 20 l. to marry his Daughter, K and he marieth her, he shall have an Action of Debt against him upon that promise, H. 31 E. 3.

If a Parson have an annuity in Fee in the right of his L Church, and the annuity is behind, and the Parson dieth, his Executors shall have Debt for the Arrerages of the annuity in the life of the Testator.

If a man grant to one a Rent in Fee, and further grant, M that if the Rent be behind, &c. that he shall forfeit for a penalty 40 s. to the grantee and his heirs, if the rent be arrear, the Grantee shall have Debt for the penalty. And so the Heir shall have the penalty, and shall have debt for the same, because it is an Inheritance, and perhaps may continue, &c.

If a man be condemned in Debt or Damages, and be A committed unto prison for the same; if the Gaoler suffer him to go at liberty, or he escape out of prison, the Gaoler shall be chargeable in debt to him at whose suit he was imprisoned, and his Executors.

and after escape, no Debt, but Action upon the Case, because he is not in prison for any duty. by Choke & Pigot 1. 5 E. 4. 19. 16 E. 4. 2 & 3.

50 E. 3. 16.] If a man lend another man a horse until a certain day, and B then he to redeliver the horse or 10 l. at the same day, after the day if the Horse be not delivered, it is in his election

to

to bring an Action of Debt for the Horse in the *Detinet* or an Action of Debt for the 10 l. in the *Debet*.

- C If a man make a Lease for life unto a woman, rendring Rent, if he Marry, and after the Rent is behind, and the Wife dieth, the Husband shall be charged in an Action of Debt for the Rent behind, because he took the profits of the Lands by reason of his Wife; otherwise it is of an Obligation made by his Wife before Marriage, then the Husband shall not be charged if a recovery be not against him and his Wife in the life of the Wife. 26 E. 3. 64.
180.
10 H. 6. 11.
9 H. 6. 29.
20 H. 6. 45.
Ascough.
49 E. 3. 25.

If a woman be endowed of a Rent, and afterwards taketh Husband, and the Rent is arrear, and the wife dieth, the Husband shall have an Action of Debt for the Rent, because it was a duty in him during the Marriage. But if a man be bounden unto a woman, and she taketh Husband, and the day of payment cometh during Marriage, and after the Wife dieth, the Husband shall not have an Action of Debt upon the Bond, because it was a duty due unto the Wife, and a thing in Action before the Marriage. vi. 14 H. 6.
26. 10 H. 6.
11.

- D If a Parson have an annuity in Fee, and the same is behind, and the Parson doth resign, yet he shall have an Action of Debt for the arrearages before the resignation. 19 H. 6. 14.
Quare.
Ascough pro.
Newton con.

- E And if a man lease a Manor for life, and the Rent is behind, which the Tenants who held of the Manor are to pay, and the Lessee for life of the Manor dieth, his Executors shall have Debt for the Arrearages of the Rent due by the Tenants of the Manor.

And so if the Tenant for life of the Manor, surrender his Estate to him in the reversion of the Manor, yet he shall have Debt against the Tenants of the Manor for the Arrearages before.

- F If a man have a Patent from the King to have a certain sum for term of years, or for life out of the Customs of London, and thereupon he have a *Liberate* to the Customer to pay him, which he delivereth to the Customer, at which time the Customer hath enough in his hands to pay him, now by the delivery of the *Liberate* and the assets in the hands of the Customer, the Customer is debtor unto him, and he shall upon this matter have Debt against him. 37 H. 6. 25.
If a *Liberate* be deliver'd to customers or other Collectors that will satisfy,

they shall be discharged against all others. 27 H. 6. 9. ac. 21 H. 6. Debt 43.

- G If two submit themselves to an award, and the Arbitrators award, that one shall pay the other 10 l. he shall have an Action of Debt upon that Abitrement.

It

37 H. 6. 35. If an Abbot hath an annuity in Fee, and the same is behind, he shall not have an Action of Debt for the arrearages, because the annuity continueth.

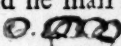
Neither shall a Parson have an Action of Debt for the arrearages of an annuity, which he hath in Fee during the time that he is Parson: But if he resign, he shall, or if he dieth, his Executor shall have an Action of Debt for the same. And if a man who is Bailiff do accompt before Auditors, and it is found that he hath expended more than he hath received, for the surpluse he shall have an action of Debt against the Lord whose Bailiff he was. But if a Receiver account, and is found in surpluse, many say that he shall not have an Action of Debt for the same, because he is bounden to lay out any parcel thereof: but it seemeth if he do it by command of the Lord, that then it is reason that he

41 E. 3. Debt have an Action of debt against the Lord for the surpluse. 127.

3 E. 4. 26. the writ shall be Loan of money made unto his Predecessor, if the money general, and came to the use of the House.

And the Count. An Attorney shall have an Action of Debt against his Client for money which he hath paid unto any person for his

20 H. 6. 21. Client, for costs of Suit, or unto his Council, &c.

New. If a man contract to pay money for a thing which he hath bought; if he make a Bond for the money, the Contract is discharged, and he shall not have an Action of Debt upon the Contract. 

9 E. 4. 20. and so 10 H. 7. 21. and 24. 22 H. 6. 16. 21 H. 7. 5. Carter 3 H. 4. 17.

If a man maketh a Lease for years, rendring Rent of Lands devisable by will, and afterwards deviseth the reversion of the same Lands unto a stranger in Fee, the Devisee shall have an Action of Debt for the Rent reserved, without any attornment of the Tenant for years. But if the Lessor hath granted the reversion by fine or deed, the Grantee shall not have an Action of Debt without attornment of the Lessee for the Rent reserved.

4 E. 4. 25. If a man be indebted, and entred into Religion, his Executors shall be sued for the Debt, and not the Abbot who Danby 5 H. 7. 24. Brion, accepted him into Religion.

13 H. 4. Debt If a man be condemned in Trespass, or in Debt upon a Bond, where he denieth his deed, and afterwards he is taken by a *Capias pro fine* at the Kings Suit within the year, and committed to prison; if the Gaoler suffer him to escape, he shall have an Action of Debt against the Gaoler: yet he was not committed to prison at his suit, but at the King's suit.

But

But within the year after the condemnation and Judgment, the suit for the King shall serve as well for the Party as the King, because the King was intituled to it by the Party, but after not : For it shall be intended that the Party is agreed with him who is condemned, and therefore after the year he shall be put to his *Scire fac.* upon the Judgment.

7 H. 4. 14. 4
E. 4. 16. 22
Ass. 74. 21 E.
4. 67. 14 H.
7. 15. 19. 20.
11 H. 4. 44.
Skene.

A If a man leaseth Lands for term of years rendring Rent and afterwards the Rent is behind, and the Lessee surrendreth his term, yet the Lessor shall have an Action of Debt for the arrearages before, as it seemeth by P. 38 E. 3. *sancti quere*, for the opinion is contrary to 2 H. 6.

[122]
9 E. 3. 7 Debt
149. 19 H. 6.
Debt 143.
Vi. 14 H. 3.
14 for wast.
7 H. 6. 2.

B If a Servant will not do his Service, by the Statute of 24 E. 3. *cap.* 9. he shall be arrested and committed to the Gaol; and if the Gaoler set him at large, he shall lose 10 l. to the King, and 5 l. to the Party. Now if the Gaoler set such Prisoner at large, the Party who would have him detained, shall have an Action of Debt against the Gaoler.

C If a man recover damages in an Action of waste, he may have an Action of Debt upon the recovery if he will.

43 E. 3. 2.

D And so a man may have an Action of Debt upon a Statute Merchant or Staple, or upon a Recognizance, or may have execution according to the Statute at his pleasure.

3 E. 4. 27.
quere. 43 E.
3. 2.

E A Prior did recover an annuity in Fee against a Parson, and afterwards he sued a *Scire fac.* against the Parson, and did recover in the *Scire fac.* the arrearages of the annuity, and afterwards he brought an Action of Debt against the Parson upon the Recovery in the *Scire fac.* for the arrearage, and it was maintainable.

F An Abbot shall be charged in an Action of Debt for Vi-ctuals or other necessary things brought by the Butler, or other Officer who is deputed to make Purveyance for the Abby in time of vacation.

26 E. 3. 55.
Debt 165.

G If a man levy aid of his Tenants for the marriage of his daughter and dieth, the daughter not married, the daughter shall have an Action of Debt against the Executors of her Father for the aid levied; and if the Executors have not any thing, she shall have an Action of Debt against the Heir for that aid, if he have any thing by descent.

3 E. 3. Itin.
North. Fitz.
Debt 57.

H If two Coparceners make partition, and one granteth or promiseth unto the other a certain sum of money for the equality of the partition, she shall have an Action of Debt upon this promise, and shall recover the money.

30 E. 3. Debt
131.

I If a man make a Tally, and make a Bond thereupon, and Seal and deliver it as his Deed, yet it shall not bind him, but he may plead against the same, that he owed him nothing.

12 R. 2. Debt
44 E. 3. 21.
44 E. 3. 2. &
9 H. 3. 24.

If a man be thing, or wage his Law. For an Obligation ought to be come debtor made in writing in Parchment or Paper, and not written for another upon any piece of Wood, as a Tally is.

And a man shall have an Action of Debt against him who becometh pledge for another upon his promise to pay the money, without any writing made thereof, *qd. vi.* in title pledge acquietand. P. 43 E. 31.
 Debtor, if not by the custom of London.

Writ de Rationabili parte Bonorum.

If the father **T**HIS Writ lieth where the Wife after the death of her husband hath two Sons, and maketh one of them his Executor. And it seemeth by the Statute of *Magna Charta, c. 18.* that this was the Common Law of the Realm; and so it appeareth by *Glanvil*, that it is the Common Law, that after the debts paid, the goods shall be divided into three parts: One part for the Wife, another part for Sons and Daughters, and the third unto the Executors; but yet the Writs in the Register rehearse the Customs of the Counties, and are of this form.

that. A Woman did demand the moiety of her husbands goods, because he had no Children, and counted upon the custom of the Realm, 31 E. 3. But 21 H. 6. 1. and 2 seemeth, it is by Custom, and not by the Law of the Land, 7 E. 4. 20. ac. M. 19, and 19 Eliz. in B. R. A Writ was brought and allowed there, notwithstanding that exception was taken at it, that it was maintainable by special Custom in London. 1 E. 4. 5. Pilling, ac.

30 H. 6. Respondr. 95. A woman brought the Writ for the moiety, and counted upon the Custom not speaking of any Town, or that it was the Custom of the Realm, 28 H. 6. 4. 40 E. 3. 3 E. 3. Dett. 156. Counts by the Custom of the Town of Northampton. 17 E. 99. and 76. and that it is by the Common Law 7 E. 4. 20. Exception was taken, because he did not count that the Custom did continue.

Rex Vic', &c. Si A. quæ fuit uxor B. &c. fecerit, &c. tunc sum. C. & D. execut. testamen. prædict. B. qd. sint, &c. ostens. quare cum secund. conf. in com. præd. hæten. obtentam, uxores post mortem viror. suor. habere debeant rationabilem partem suam de bonis & catall. viror. suor. præd. iidem execut. præfat. A. rationabilem partem suam ad valentiam 10. marcar. de bonis & catall. quæ fuer. præd. B. quondam viri sui detinent, minus iuste, & ea ei reddere contradicunt, in ipsius A. damnum non modicum & gravamen, & contra consuetud. præd. & hæbeas ibi sum. & hoc breve, &c.

And

And the like Writ the Sons and Daughters may have against the Executors ; and the Form is:

52. And see 31 H. 8. it hath oftentimes been put in ure as Common Law, and never demurred upon.

Rex, &c. quia A. de N. & S. soror ejus fecerunt nos secur. &c. sum. Manage &c. I. de H. & E. exec. testament. R. de N. qd. sint, &c. ostens. quare is no advancement, cum secund. consuetud. in com. præd. hætenus obtentam & approba. if the Father's goods nec in vita patrum suorum promoti fuer. hab. debeant rationabiles be not given partes suas de bonis & catall. quæ fuer. patrum suor. præd. iidem in his life, exec. præ. A. de N. & S. post mortem præd. R. patris sui cujus hæ. for issue was taken there rationabiles partes suas ad valenc. decem librar. &c. ut supra. upon.

2 E. 2. Fitz. Detinue 361
30 E. ibid.
3 E. 3. Det. 156.

Secda ad Molendinum.

M *Secda ad Molendinum* lieth, where a man by an usage time out of mind, &c. hath used to grind his Corn at the Mill of B. and afterwards he goeth unto another Mill, and withdraweth his suit from B's. Mill, then may he have this Writ. And also it seemeth that the Lord may have this day upon a Writ against his free Tenants who hold of him to do suit gitt in tail, at his Mill, and yet he may distrain his Tenants for the suit, and avow for the same.

Quare If a man may create a Tenure at this day upon a writ gitt in tail, or such Estate, P. 20. El. Com. B. 3

A And by Prescription a man may have suit to his Mill, of the villeins of a stranger, and have *seftam ad molendinum* against them, and that it seemeth by reason of their residence in certain which they dwell upon. And this Writ is sometimes *viscontiel*, and shall be sued in the County by a Writ of *Justicies*, at the Plaintiffs pleasure, or in the Common Pleas by a *Præcipe*, &c. and the Form of the Writ in the County is such.

Lease was made for line of parcel of the demesne doing suit to his mill, and good.

Rex Vic. &c. Præcipimus tibi, quod Justicies A. qd. juste & sine dilation. fac. seftam suam ad molendinum E. de N. in C. quam ad illud debet & solet, ut dic. sicut rationabiliter monstrare poterit, quod eam ad illud facere debet, ne amplius inde clamorem audiamus pro defectu justitiæ. Teste, &c.

[127] Note, That Tenant for Life of a Mannor shall not have this.

Writ, because it is in the *Debet & solet*, 20 Eliz Dyer Br. note 127, 128. Curia Glanville lieth for Tenant for life, and yet the Writ is, *Debet & solet*.

A And if the Writ be sued in the Common Pleas, the Writ shall be thus,

Præcip. A. quod juste & sine dilatione faciat seftam ad molendinum E. de N. in C. quam ad illud facere debet & solet, ut dicitur, & nisi fecerit, &c. tunc sum. &c.

And

Quod permittat.

And by the Rule in the Register, a man shall have a Writ B of *Setta*, &c. *quod faciat settam, ad furnum, & ad thorale, & ad omnia alia hujusmodi.* And Tenant for life, or in Dower, may maintain this Writ in the *Debet & solet*, for this is of the nature of a Writ of the possession: But in the *Debet* only, seemeth to be in the meer right. And the Defendant shall C have a view in a *Setta ad molendinum* in the *Debet & solet* of Land, &c. of the Mill in which the suit is to be done. And the process in a *Setta ad molendinum* shall be summons, At- D tachment, and distress, &c. and if he do appear after default, then shall issue a *Disstringas ad audiendum Judicium*, and yet he may sue his default. And you may see the form of the E Count in this Writ in the Book of *Entries*, where he counteth upon a Tenure of Land, &c. and another Count, where he counteth upon prescription: *sc* that the Tenant, and all those which held those Lands, have sued to do their suit at his Mill, *quod vi f. 169.*

Quod permittat.

Quod permittat lieth where a man hath Common of pasture F for his Cattel, and he is disturbed by a stranger that he cannot use his Common, then shall he have this Writ: And this Writ may be sued by Justices in the County, or in G the Common Pleas; and the form of the Writ is,

37 H. 3. 12. Rex Vic. &c. *Præcipimus tibi, quod Justices A. quod juste, &c. permittat, B. hered. communiam pasturæ in N. ad centum oves, &c. vel ad centum boves, &c. quam habere debet, ut dicitur, sicut rationabiliter, &c. ne amplius inde clamorem audiamus. vel sic: Communiam pasturæ in terra ipsius A. quam in ea habere debet, &c. Vel sic: Quod permittat A. habere Communiam pasturæ in centum acris ipsius A.*

Vi. 2 H. 4. 13. View grantable in this Writ, yet it is said 3 E. 3. that the defend. cannot vouch in a *Quod permittat*, for that it is not a *Præcipe quod reddat*. Vi. 45. E. 3. 8. in the view.

Rex Vic. &c. Præc. A. quod juste, &c. permittat B. habere Communiam pasturæ in N. & 40 acr. bosci, quam habere debet, ut dicit. Et nisi fecerit, & prædict. R. fecerit te, &c. tunc sam. &c.

And another form of the Writ for common append, thus:

Red

Rex Vic. &c. Prac. A. quod iuste, &c. permittat B. habere Communiam pasture in N. que pertinet ad liberum tenementum suum in eadem villa, vel in alia villa, de qua idem A. vel pater pred. A. cujus heres ipse est, injuste & sine iudicio disseis. R. patrempd. B. cujus heres ipse est, post primam transfretati. Dom. Henr. Regis fil. Reg. Johan. in Vascon ut dicitur Et nisi, &c.

Note This Writ is in the nature of a writ of Entry upon a disseisin made to his Anc. stor.

H And the Rule in the Register is, That the Writ of *qd. permittat* lieth of Common of pasture, Turbary, Piscary, and reasonable Estovers, against a Disseisor of a disseisin to the Plaintiff of his ancestors, by him and his ancestors, and not in other degrees, because he ought to have a writ of Right in the *Debet & solet*.

But an Abbot may have a Writ of *Quod permittat* of a disseisin made unto his Predecessor, and shall make mention of the disseisin in his Writ.

I And the form of the Writ *de libera piscaria* is such: *Rex. &c. Prac. A. &c. quod, &c. permittat B. habere liberam piscariam in aqua ipsius A. in N. Vel sic, in aqua in N. quam in ea habere debet & solet, ut dicit. Et nisi, &c.*

K There is another form of the Writ of *Quod permittat*, in the nature of *Mortdauncestor*, and is such.

Rex, &c. Prac. A. quod, &c. permittat B. habere Com. pastur. in N. in qua C. pater, vel mater, vel soror ipsius B. cujus heres ipse est, fuit seifit. ut de feodo tanquam pertin. ad liberum tenementum suum in eadem villa die quo obiit, ut dicit. & nisi, &c.

And if it be a Common in gross, then he ought to put this Clause in the Writ, *tanquam pertinens ad liberum tenementum suum, &c.*

L And so a Parson or an Abbot shall have a *Quod permittat* of the seisin of his Predecessor, and the Writ shall say.

Prac. &c. quod permittat B. personam Ecclesie de C. habere Com. pastur. in N. de qua F. quondam persona de C. pred. &c. fuit seifit. ut de jure Ecclesie sue pred. die quo obiit, ut dicit. Et nisi &c.

And the Rule in the Register is, That in the same manner as is said before of Common of pasture, so may it be said of all other Commons, as of Turbary, Piscary, &c.

M And there are divers other Writs of *Quod permittat* of another nature; as a man shall have a *Quod permittat* against the Lord, to suffer his Villains to do suit to his Mill, &c. and that accrueth by usage and prescription, the Writ is.

A *Rex, &c. Pracipe A. quod iuste & sine dilatione permittat villanos suos de C. facere sectam ad molendinum B. &c. in E. &c. & nisi &c. Et pradi. B. fecerit, &c. tunc sum, &c.*

Z

And

If the Mil-
le. taketh
Toll, then
Trespas li-
eth: But if
the Tenant
of the Free-
hold take it,
a Quod per-
mittat.

41 E. 3. 24. &
44 E. 3. 6c.

vi. E. 1. Br.
Battall 13
12. Quod
permittat
9. a Quod
permittat.
brought of
Estovers.

And another Writ: *Præcipe A. quod permittat B. molere dominicum bladum suum de N. ad molendinum ipsius A. in N. quietum de multura, qd. ad idem molendinum molere debet & solet ut dicit. Et nisi, &c. Vel, Præcipe A. &c. quod permittat B. haurire aquam ad fontem ipsius A. in N. sicut ad illum haurire debet & solet ut dicit: & nisi, &c. Vel, Quod permittat B. adaquare gregem suum ad aquam ipsius A. in N. sicut illam adaquare debet & solet, ut dicit; Vel, Quod permittat B. habere liberum taurum suum in N. sicut habere debet & solet, ut dicit; Vel, Quod permittat B. habere quoddam chimum ultra terram ipsius A. in N. &c. Vel, Quod permittat B. habere liberam fald. suam in dominicis terris suis in I. quam habere debet & solet. Vel, Quod permittat habere liberam piscariam in aqua ipsius A. in N. &c. Vel, Quod permittat habere liberum passagium ultra aquam de Humbr. in navi ipsius A. quod in ea habere debet & solet ut dicit, &c. & nisi, &c. But a man shall not have a Quod permittat de rationabilibus estoveriis in bosco, vel in turbaria, vel in bruera, & similibus.*

And the like by the Rule in the Register, for in lieu thereof is given the Writ of Assise of Novel Dessen by the Statute of West. 2. cap. 26.

And a man shall have a Writ, *Quod permittat erigere scalas in solo ipsius L. in B. mans. ipsius contiguo, pro domibus suis ibidem quoties fuerit opus cooperiend. & reparand. sicut erigere debet & solet, ut dic. & nisi, &c.*

And a man may have a Writ of *Quod permittat* of a Corrodie; as *Præcipe P. Priori, &c. quod permittat B. habere sustentationem competent. pro se & ungarci ene in victu & vestitu & omnibus aliis necessariis, ac pro uno equo in victu singulis diebus, & etiam sustentationem competent. pro quatuor hominibus de com. ejusdem B. quatuor garcionibus, 4. equis, 4. leporariis, & 4. esperveriis singulis An. ad festa Natalis Domini, Pasch. Pent. & omnium Sanctorum, & per 3 dies post quodlibet festor. prædict. in Prioratu de C. &c. de qua E. quondam Prior loci prædict. injuste, &c. diff. F. patrem prædict. B. cujus heres ipse est post primam transfretationem, &c.*

30 E. 1. Qd.
permittat 10
Br. Battall
13.

And in *Quod permittat habere chimum*, in the nature of the Writ of Right, and to hold suit, and dereign the warrant, &c. and the Defendant came and joyned the mise upon the meer right, and was received.

4 E. 3. 48.
Quod per-
mittat 7.

And in a *Quod permittat* by a Parson, he counted *de fac. B. & droit*, and held suit, and dereign, &c. and the Tenant came and gaged battail, &c. *tempore Regis, E. 1*

And Tenant in tail shall have a *Quod permittat*.

And in a *Quod permit.* of a Common the Tenant al-
ledged

ledged the darrein seisin in the Plaintiff, and it was adjudged a good plea to abate the Writ. But there the Plaintiff counted of the seisin of his Ancestor; For a man shall have a *Quod permittat* of his own seisin, as it seemeth.

D And a *Quod permittat ipsum reducer. cursum aquæ, &c.* which is misturned, will well lie.

E And a man shall have a *Quod permit.* against the Tenant ^{2 H. 4. 13. ac.} of the Freehold for an act done, or a disturbance done by a stranger who was not Tenant of the Soil.

F And the Process in a *Quod permit.* is Summons Attachment and Distress: And if the Sheriff at the Summons return *Nihil*, the Plaintiff may pray a *Capias* and have it, ^{30 E. 3.} *Quod vide H. 39 E. 2.*

G And the form of a Count in a *Qd. permittat* appears in the book of Entries fol. 80. on the first side.

H And if a man build a house, or a wall, or other thing which is a Nuisance unto the Freehold of another, and dieth; he whose Nuisance it is shall have a Writ *Qd. permittat* against his heir that did the Nuisance, and the Writ is such.

*Rex Vic. &c. Præcip. A. quod juste, &c. permittat B proster-
ner. quandam domum, vel quandam murum, vel quandam sepem
vel quoddam molend. vel fossatum, quem quam vel qd. R. pater
vel alius antecessor. prædict. A. cujus hæres ipse est, injuste &
sine judicio levavit ad nocumentum liberi tenement. C. patris
vel alterius antec. præd. A. cujus hæres ipse est in eadem villa
vel in alia, post primam, &c. ut dicit. & nisi fecerit, &c. Vel
sic, Quod permittat B. exaltare, vel deexaltare quoddam stag-
num in L. quod prædict. A. injuste levavit, vel deexaltavit, ad
nocument. liber. tenementi sui vel C. patris prædicti B. &c. Et
sic, Quod juste, &c. permittat B. reducere cursum cujusdam aquæ
in L. in rectum & antiquum cursum suum, quem C. mater præd.
A. cujus hæres ipse est, divertit, ad nocumentum. &c. Vel, sic,
Quod juste, &c. permittat B. deobstruere quandam viam in N.
quod C. pat. præd. A. cujus hæres ipse est injuste obstruxit, &c.*

And if a man levy a Nuisance unto the freehold of another, and he to whom the Nuisance is done maketh a feoffment in fee of the Land; and he who did the Nuisance maketh a Feoffment of the Land in which the Nuisance is; yet there is a Writ in the Register for the Feoffee of him to whom the Nuisance was levied against the Feoffee of the other, to reform that Nuisance, and the Writ is such.

*Rex Vic. &c. Præcipe C. quod juste, &c. permittat B. de-
artatam quandam viam in N. quam C. injuste & sine judicio
artavit, &c.*

[125] But this Writ is not given by the Statute, but may
 Or Bailiv. sue, &c. by the Statute, *West. 2 in Casu Consimili, &c. c. 2. 4.*
 34 E. 1. Br. And a *Qd. permittat* of a Fair or Market shall be sued A
 Demand 43 in the Common Pleas; and the Writ is such:

*Rex Vic', &c. Si A. fecerit, &c. tunc sum. B. &c. quod sit coram
 Justic. nostris, ostens. quare levavit quod. Mercatum, vel, quan-
 dam Feriam in I. ad nocumentum liberi mercati, vel liberæ
 Ferie ipsius A. in eadem villa, vel, in alia post primam, &c. ut
 dicit. Et habeas ibi summon. &c.*

And the like Writ for the Heir where the Father
 doth levy the Market or Fair unto the Nufance of ano-
 ther Fair or Market; or for the Heir against him who
 levieth the Nufance, &c.

Writ of Admesaurement of Pasture.

THe Writ of Admeasurement of pasture lieth be- **B**
 twixt Commoners who have Common append-
 ant to their Freeholds if one of them surcharge the com-
 mon by putting in more Cattel in the Common than he
 ought to have Common for there, then that Com-
 moner who is grieved shall have this writ of admeasure-
 ment of pasture; and by this sute all the Commoners
 shall be admeasured, as well those who have not sur-
 charged the common, as he who hath surcharged it, and
 he who bringeth the Action shall be also admeasured.

8 H. 6. 26.

View in the
 Action. 3 his
 6 26. Vou-
 cher; also
 32 E. 3.
 Voucher
 194.

Note, this
 Writ is vi-
 contiel, and
 the Statutes
 are the
 Judges by
 7 E. 4. 23.
 18 E. 3. ad-
 measure-
 ment 7 a
 notable
 case.

And the Writ is *Vicontiel*, and shall be directed unto **C**
 the Sheriff, and shall not be returnable; and the form of
 the Writ is such:

*Rex Vic. &c. Questus est nobis A. quod B. & C. uxor ejus
 injuste superoneraverunt communiam pasturæ suæ in N. ita qd.
 in ea plura habent animalia & pecora quam habere debent &
 ad ipsos pertinet habendum Et ideo tibi precipimus, quod juste
 & sine dilatione admens. fac. pasturam illam, ita quod præd.
 B. & C. non habeant in ea plura animalia & pecora quam ha-
 bere debent. & ad ipsos pertinet habendum secundum liberum te-
 nementum suum, quod habent in eadem villa. Et quod præd. A:
 habeat in pastura illa tot animalia & pecora quot habere debet,
 & ad ipsum pertinet habend', ne amplius inde clam. audiamus.*

And if the Tenant surcharge the Common with his **D**
 Cattel, &c. the Lord shall not have the Writ of admea-
 surement against the Tenant; but it seemeth the Lord
 may distrain the surplufage of the Cattel damage feasant.
 And some say, That the Lord may have an Assize against
 the Tenant for the surcharge, for that he is disturbed of
 the profit of his Land. *Quer. of these Cases.* But

But if the Lord surcharge the Common, the Tenant shall not have a Writ of admeasurement against the Lord, but he shall have an Assize of Common against the Lord. ^{18 E.2.20.} ^{See 179 E.}

And so if the Lord do make approvement of the Common unto himself, and do not leave sufficient Common to the Tenant, the Tenant shall have an Assize, and not a Writ of admeasurement. And he who hath Common appurtenant certain, or Common by grant certain shall be admeasured; And a Tenant shall have an admeasurement against him; but he who hath a Common appurtenant without number, or Common in gross without number, shall not be stinted, nor a Writ of admeasurement doth not lie against him. ^{126 D.E.}

E And in the time of E.1. it was agreed, That one neighbour shall have a Writ of admeasurement against another where they enter-common, by reason of Neighbourhood.

F And if the Sheriff will not make the admeasurement, he shall have an *Alias* and *Pluries*, *vel causam Nobis significet*. And if he do not return the *Pluries*, he shall have Attachment against the Sheriff. And the Plea may be removed out of the County by a *Pone* at the suit of the Plaintiff without shewing cause in the Writ. But at the suit of the Defendant he ought to shew cause in the Writ: and the writ of *Pone* is such:

Pone ad petitionem petentis coram Justit. &c. tali die loquelam quæ est in Com. tuoper breve nostrum inter A. & B. de com. pastura in N. admensur. & sum. &c. præd. B. qd. tunc sit ibi præf.

G A. inde responsurus, &c. & habeas, &c. hoc bre', & aliud breve. ^{7 B.4.22.} ^{Danty.}

And upon this writ of admeasure. the Plaintiff shall enter his plaint into the County before the Sheriff, as he shall do in a Reple. sued by writ, and upon that the Sheriff shall make a Warrant against the Defendant, &c. and warn him to appear; and if he come and plead nothing in bar, or grant it, then the Sheriff shall make the admeasure.

In a Writ of admeasurement brought against one of Common in D. the Defendant said that he had Lands in B. and S. to which he had Common in the said place, and yet the Writ good, for it is holden there that the ouster of the surcharge shall not be in the same place only, yet it seemeth all the Common shall be admeasured, *Temp. E. 1. Admeas. 15.*

But if the Defend. shew cause unto the Sheriff wherefore the admeasure. should not be made, then the Sheriff ought not to make admeasure. upon this writ; but the Plaintiff ought to remove the plea by a *Pone* into the

Common Pleas, by which *Pone* the Defendant shall have day for to appear, &c. And if he appear not, then shall issue a *Distring.* directed to the Sheriff to distrain the party, and such day shall be given by that writ, that two Counties may be kept between the date of the Writ and the return, and in the Counties Proclamation shall be made, that he come and shew cause why the Admeasurement should not be made. And if he do not come at the return of the *Distringas* then a Writ shall be awarded unto the Sheriff to make the Admeasurement by his default; and that is given by the Stat. of West. 2 cap. 8. and the writ is:

Rex Vic. &c. Cum A. nuper nobis questus est quod B. & C. injuste superoueraver communiam pasturæ suæ in N. ita quod in ea plura habent animalia & pecora quam habere debent & ad ipsos pertinet habendum: Per quod tibi præcipimus, quod iuste & sine dilatione admensurari fac. pasturam illam, ita quod prædict. B. & C. non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinet habendum secundum liberum tenement. suum in eadem villa. Et quod prædict. A. habeat in pastura illa tot animalia & pecor quot habet, & ad ipsum pertinet habend. &c. ne amplius, &c. ac tu nihil inde feceris sicut ex querela ipsius A. accipimus, cumque in breui nostro de admensura pasturæ statuerimus qd. post magn. distriction. dentur dies infra quos duo Com. teneant. ad quos proclametur, quod reus veniat actori respondere. Ad quem diem si non venerit, fiat admensura per defaultam: Tibi præcipimus, sicut alias tibi præceper. quod iuste & sine dilatione admensur. fac. pastur. antedict. iuxta tenorem alterius brevis nostri tibi inde directi, & iuxta form. statut. nostri inde provis. & edit. ne per præf. A. oporteat nos super hoc iteratum sollicitari, Teste, &c.

And when the plea is removed by *Pone* in the Common A Pleas, and the Plaintiff appears and the Defendant, then the Plaintiff shall count against the Defendant, and see the form of the count in the book of Entries, fol. 128.

And if the Defendant do grant to have the admea- B surement, a Writ shall issue out to the Sheriff to make admeasurement, which shall be such:

Rex Vic. &c. Præcipimus tibi, quod assumptis tecum 12, &c. per quos, &c. qui nec, &c. in propria persona tua accedas ad communiam pasturæ admensurandum & per eorum sacrament. admensurandum fac. communiam pasturæ prædict. ita qd. præd. 9. & C. def. non habeant plura, &c. & ad ipsos pertinet non habend. secund. liberum tenementum suum, quod habent in eadem villa. Et quod præd. R. habeat in pastura illa tot animalia & pecora, quod habere debet, & ad ipsum pertinet habere secund. liberum

*liberum tenementum suum, quod habet in eadem villa, & ad-
mensurat quam, &c. scire facias coram Justic. nostris, &c. sub
sigillo tuo, & sigillis eorum, &c.*

C After the *Pone* returned to remove the plea out of the County: if the Defendant make default at the day of the return of the Writ, then shall issue a Writ to the Sheriff to distrain the Defendant, and in the Writ shall be contained that he make open Proclamation in two Counties, &c. that the Defendant come into the Common Pleas at the day of the return of the *Disfring.* to answer to the Plaintiff, &c. And if the Sheriff return the Writ served; and the Defendant doth not come, then shall issue a Writ to the Sheriff to make the admeasurement.

D And it appeareth by the Book of Entries, fo. 123. That ^{See 125. D} a Writ of admeasurement doth not lie against the Lord of the Soil.

E And if a man be once admeasured by a Writ of ad- ^{18 E. 3. 20.} measurement directed unto the Sheriff by the Sheriff, ^{Admeasu-} &c. and afterwards he surchargeth the Common again, ^{ment 7. ac.} then the party who sued the first Writ, shall have a writ ^{and there} to the Sheriff, called a Writ *De Secunda Superoneratione*; ^{holden that} and the Writ is such: ^{is lieth not}

the Lord of the part of the demesns, so that the Feoffee is in the same degree as the Lord himself. 8 E. 2. Admeasurement 14, in admeasurement of Pasture the Defendant said that the Demandant pendant the Writ had ejected him of the Common and no plea, for notwithstanding that he had not the Common, he held the Land for which the Common is surcharged.

*Rex Vic. &c. Monstravit nobis A. qd. cum ipse breve nostrum
nuper, tibi detulisset de communia pasturæ suæ in N. admensu-
randum quam B. injuste superoneravit. Et tu pastu. ill. per
præceptum nostrum, prout moris est in regno nostro admens. &c.
idem B. pasturam illam post admensuram prædict. injuste super-
oner. in ipsius A. dispend. non modicum & gravamen, & contra
formam stat. nostri super hoc provis. Et quia eidem A. juxta
formam ejusdem statut. subvenire volumus, ut tenemur: Tibi
præcipimus, quod tu in propria persona tua accedas ad pasturam
illam, & per sacramentum proborum & legalium hominum de
ballivis tuis per quos rei veritas melius sciri poterit, de secunda
superoneratione, ejusdem pasturæ diligenter inquir. Et si per in-
quisitionem illam pasturam ill. per præf. B. post admens. iterum
injuste superonerat. inveneris, tunc de averiis illis pastur. ill.
ultra debis. numer. post primam admens. positis, vel de pretio illor.
nobis respondeas ad Scaccarium, & superoneration. amoveas sup.
Teste, &c.*

And it appeareth by this writ, that a man shall have a Writ *De Superoneratione* upon the first Writ of admeasurement of Pasture, which is *vicontiel* and directed to the Sheriff; if the Sheriff make admeasurement upon that writ, and afterwards the Defendant surcharge the Common again as well as upon a writ of admeasurement awarded out of the Common Pleas upon a Judgment there given, &c. But upon the writ of admeasurement awarded to the Sheriff, by which he maketh admeasurement, if the Defendant surcharge the common after the writ of *Secunda Superoneratione* shall be awarded out of the Chancery: But upon a Judgment given in the Common Pleas of admeasurement, &c. if the Defendant surcharge the Common, the Writ of *Secunda Superoneratio* shall be awarded out of the Common Pleas. And the form of the Count in a Writ of admeasurement is such.

Et unde prædict querens queritur, quod cum ipse seisset. sit de uno mesuag. cum pertin. in S. ad quod idem querens habet & habere debet communiam pasturæ cum quatuor equis, in centum acris pastur. vocat. B. quolibet ann. per totum annum pertin. Et præd. def. seisset. existit in dom. nico suo ut de feod. de quatuor virgat. terre, cum pertin. in eadem villa, ad quas idem defend. habet & habere debet communiam pasturæ cum centum equis, & 20 bobus &c. quolibet ann. per totum annum pertin. præd. defend. injuste superoneravit, commun. pastur. præd. vocat. B. ita quod in ea plura habet animalia & pecora quam habere debet, & ad ipsum pertinet habere, unde dicit quod deteriorat. est, & damnum habet ad 20 li. & petit admesur.

And by the Writ of *Secunda Superoneratione* the Plaintiff shall recover his damages against him that was Defendant in the first writ, and also he shall forfeit unto the King the Cattel which he put in over the due number after the admeasure. made. And all this is by the Stat. of *West. 1. 2.*

And note, That by the Writ of admeasurement all the Commoners shall be admeasured as well as those who were parties to the Writ. But yet if any of those who are Commoners which were not parties to the Writs of admeasurement, &c. do surcharge the Common after Admeasurement, they shall not forfeit their Cattel, nor the value of them that were in the Pasture above the due number, because they were not parties to the first Writ, nor the party shall recover damages against them for this surcharge in this Writ. For the Writ of *Secunda Superoneratione* doth not lie but only against him against whom the first Writ was sued forth.

Writ

Writ de Reparatione facienda.

(127)

A **T**He Writ *de Reparatione facienda* lieth in divers cases, one is, where there are three Tenants in Common or joynt, or *pro indiviso* of a Mill or a House, &c. which falls to decay, and one will repair, but the others will not repair the same, he shall have this Writ against them; and the Writ is such:

B *Rex Vic. &c. Si A. fecerit, &c. tunc sum. &c. B. & C. quod sint, &c. ostensur. quare cum iidem A. B. & C. quoddam molendinum in N. pro indivis. teneant, & ipsi exitus inde provenientes pro equali portione inde percipiant, & ad reparationem & sustent. ejusdem molendini teneant. ac iidem B. & C. licet portionem de exitibus illis ipsos contingent. percipiant, reparationi tamen & sustentationi prædicti molendini contribuere contrad. in ipsius A. dampn. non modicum & gravam. ut dicit, & habeas ibi sum. &c.*

C And so if a man have a house adjoyning to my house, and he suffer his House to lie in decay to the annoyance of my House, I shall have a Writ against him to repair his House in such form:

Præcipe A. quod, &c. reparari fac quandam domum suam in N. quæ minat ruinam ad nocumentum liberi tenementi B. in eadem villa, quæ reparari debet & solet, ut dicit, &c. & nisi, &c.

D And so if I have a passage over a Bridge, and he suffer the same to fall to decay, I shall have Writ against him in this form:

Rex, &c. Præcipe A. quod, &c. reparari faciat una cum B. & C. participib. suis pontem vel quoddam stagnum in N. quem vel quod cum eis reparare debet ut dicit, & nisi, &c. vel sic, quendam pontem, vel quoddam stagnum qui vel quod dirut. vel disrupti est, ad nocument. liberi tenem. B. in eadem villa, quem vel quod facere debet & solet, &c. ut dicit, vel sic, reparari fac. cum B. & C. participibus suis fossata & wallias in N. quæ diruta sunt ad nocumentum liberi tenementi B. & C. quas vel quæ cum eis reparare debet & solet ut dicit, &c.

And if any Bridge, Wall, or Sewer be broken unto the annoyance of the country, upon a surmise made by any person thereof in Chancery that certain persons ought to repair the same, he shall have a writ unto the Sheriff to distrain such persons to repair the same. but it appeareth by the Register, that the K. shall send his Commission to the Sheriff to enquire who ought to make such Bridge, and

and that he distrain them to make the same, and repair it. But by the Statute of 28 E. 3. cap. 9. A Commission shall not be made unto the Sheriff to take an Indictment; and the King may send unto the Sheriff to distrain those persons who ought to make or repair such a way, or Causey, or pavement, and upon it an *Alias* and *Pluries* if it be not done, and an Attachment upon the same; And if the Bridge or way be in the Confines of the County, he shall have several Writs into every Sheriff to distrain them in their Bailiwicks, that they with the men in the other Counties shall make and repair the Bridges and ways, &c.

And there is another Writ in the Register in the title of the Writ of *Ex gravi querela*, thus.

Rex Majori & Vic. de A. salutem, Ex parte W. nobis est ostensum quod cum ipse habeat quoddam selarium cum pertin. in præd. villa de A. ac I. habeat quoddam selarium cum pertin. in eadem villa de super selarium prædictum dirutum et contractum, ad nocumentum selarii ipsius W. & per præf. I. secundum consuetudinem ville præd. reparari debeat, idem tamen I. selarium illud reparari contradicit, prout dicit ad grave damnum ipsius W. & contra consuetudinem prædictam: Et quia nolumus, quod idem W. injuriatur in hac parte: Vobis præcipimus, quod vocatis coram vobis partibus præd. auditisque hinc inde eorum rationibus, eidem W. in præmissis fieri fac. debitum & festinum justitiæ complementum, prout de jur. & secundum consuet. &c.

And thereupon the Mayor and Sheriffs, or Bailiffs shall proceed, and award process against the Parties; and if they will not do it, he may have an *Alias* and a *Pluries*, and Attachment against the Mayor and Bailiffs.

Writ de Curia claudenda, and for repairing of Hedges.

THe Writ of *Curia claudenda* may be sued before the Sheriff in the County, and then the Writ is such: Rex Vic. &c. Justicies A. quod juste, &c. claud. curiam suam in N. que aperta est ad nocumentum liberi tenementi B. in eadem villa, vel in alia villa, quam claudere debet & solet ut dicit. sicut rationabiliter monstrare poterit, quam eam claudere debeat, ne amplius, &c.

And this Writ lieth where one ought for to enclose his Land from his Neighbour, and will not do it, he shall have this Writ; and the Writ may be sued in the Common Pleas, and then the Writ is such:

Rex

11 R. 2. Curia Claudenda, 5. L. 5. E. 3. 100. It ought to be in the Deb. and Solet and the Tenant for life shall have the Writ. 2 H. 4. 11.

I Rex, &c. *Præcipe A. quod iuste, &c. claudat Curiam suam in N. que aperta est, ad nocumentum liberi tenement. (usque ibi) &c. debet & solet. Et nisi, &c.* L. 5 E. 4. 118
119 a man
shall have
this Writ

before he be damnified *Quia met. 27 H. 6. Curia Clauda* Nontenure is a good plea in the Writ.

A And this Writ may be removed out of the County (*1828*) at the suit of the Plaintiff without cause, and at the suit of the Defendant he ought to shew cause in the Writ, and in the end of the Writ shall be this clause : *Fiat executio brevis, &c. si causa sit vera, aliter non.* 16 H. 7. 9.
Per Fineux
the Judg-
ment is to
recover the
Inclosure
and dama-
ges.

B And the *Curia claudenda* doth not lie but against him who hath a Close adjoining unto the Plaintiffs Land, and it doth not lie but for him who hath a Freehold in the Land, for Tenant for years shall have this Writ, and the view lieth in this Writ. 22 H. 6. 7. 8.
22 E. 4. *Curia claud.* 39 H.
6. *ib. ac.*

C But it seemeth that if a man have Common in a great waste to him and his heirs, or for life, and he who hath the Land adjoining unto the waste and soil, and who ought to enclose, enter into the waste, and will not make his enclosure, yet the Commoner shall not have this Action for the damages which he sustaineth, &c. although the Commoner may distrain the Cattle damage feasant in the Land which is his Common, for the Writ doth suppose, *Ad Nocumentum Liberi tenet.* of the Plaintiff, which proveth that the Plaintiff ought to have the Soil adjoining, if he have the Action. 13 H. 2. *Cur. claud.* 3.
12 H. 8. 2.
24 E. 3. 4.
15 H. 7. 13.
5 H. 7. 2.
22 H. 6. 9.

D And the process in this Writ is Summons, Attachment and Distress, and if he do appear and afterwards make default he shall have a *Distring.* in the place of a *Petit Cape*, &c. And if he make default at the day of the return of that Writ, he shall have a Writ to enquire of Damages, and also a Writ to distrain him to make the reparations, 22 E. 4. *Issue*
127. 10 E.
4. 7. 13 R. 2.
Cur. claud. 3

E &c. And in this Writ in his Count he ought to shew the certainty of the Land which the Plaintiff hath adjoining unto the Defendant, and the certainty of the Land which the Defendant hath there adjoining which he ought to enclose. And to alledge a prescription of the Enclosure, &c. as appeareth in the Count in the Book of Entries. *fo. 32.* So it is holden 22 H. 6. for if it be by Indenture or Composition, then he shall be put to his Writ of Covenant. 29 H. 6.
38. Dy.

Writ of Quo Jure.

THe Writ of *Quo Jure*, where a man hath Lands in Fee, and another claimeth Common in that Land, he who owneth that Land shall have this Writ against F that Commoner who claimeth the Common, and the Writ is such :

7 H. 4. 12. it is a good plea to say that he hath nothing in the Lands in Which he claimeth Common.

Rex Vic. &c. Si A. fecerit, &c. tunc sum. &c. B. quod sit, &c. ostens. quo jure exigit, &c. communiam pasture in terra ipsius A. sicut idem A. null. habet communiam in terra ipsius B. nec idem G B. servitium faciat, quare communiam in terra ipsius A. habere debet, ut dicit, & habeas inde, &c.

And this Writ lieth for the Lord of a Town, or of a waste, or for any other Tenant who claimeth Common in his Land : although he be not Lord of the waste, nor H the Town.

And this writ is a writ of right in its nature, for when the Plaintiff hath declared in this Writ, the Tenant shall make defence and set out his title to their Common, and I alledge seisin thereof, and the Esplees, *Et quod tale sit jus suum offert, &c.* as the Demandant shall do in a Writ of Right, and then the Plaintiff in the *Quo jure* shall make defence, and deny the seisin alledged by the Defendant, and joyn the *Mise* upon the meer Right, or by Battail, and see the Count and the form of pleading in a *Quo jure*, *Lib. Ent.* 96. and 80.

And in a *Quo jure* brought by two, Summons and Severance lieth, and the nonsuit of the one shall not be the Nonsuit of the other. And this *Quo jure* lieth against se- K veral Tenants, as it appeareth, *H. 24. H. 3.* But in that case they shall, it seemeth, make several Defences, and make- veral Titles, and joyn the *Mise* severally. And the view shall be granted in this Writ. And the process in this Writ is Summons, Attachment and Distress, and after appearance if the Defendant make default, a grand Di- L stress shall issue out in the place of *Petit Cape, &c.*

Writ

Writ de Rationabilibus Divisis.

THe Writ *de Rationabilibus Divisis* is in its nature a Writ of Right. And lieth properly where two men have Lands in divers Towns or Hamlets, so that the one is seised of the Land in one Town or Hamlet, and the other of the Land in the other Town or Hamlet by himself; and they do not know the Bounds of the Towns or Hamlets, which is the Land of one, and which is the Land of the other; Then to set the Bounds in certain, this Writ lieth for the one against the other; and the form of the Writ is such:

Rex Vic', &c. Præcip. tibi quod juste & sine dilatione fac. esse retionabiles divisas inter terram A. de B. in C. & terram D. de E. in F. sicut esse debent & solent, unde idem A. querit. quod præd. D. plus inde trahit ad feodum suum quam ad ipsum pertinet habend. ne amplius, &c. Teste, &c.

And this Writ lieth for Tenant in Fee-simple, and against Tenant for life, and in this Writ the Tenant for life shall have aid of him in the Reversion, and they may joyn the Mife in this Writ, and it shall be tried by the grand Assize, as other Writs of Right shall be.

And this Writ is *Vicontiel*, and may be determined by the Sheriff: For the Plaintiff in this Writ shall make his complaint before the Sheriff, in nature of a Count, and upon the same the Sheriff shall make a Precept to warn the Defendant, and when he cometh the Plaintiff shall count, and the Defendant shall answer the same in the Count, &c. and if he deny it, then the Sheriff shall make the division and partition of the Land between them by certain metes and bounds.

But if the Defendant will plead and joyn the Mife upon the meer Right, and put himself on the grand Assize, then the Plaintiff ought to remove the same by a *Pone*, without cause, and the Defendant may remove it with cause, as it is said in other Writs. And the Count in this Writ is in this form:

Et idem A. modo venit & dicit qd. cum rationabili & rect. divis. esse debent inter terram prædictam N. &c. in S. & terram ipsius A. & B. divis. prædict. incipient versus Boream in quodam loco vocato K. & sic directe versus Austrum in longitudinem per L. usque E. ultra quas divisas prædictus N. &c. nihil habere debet versus Occidentem, idem N. &c. ultra divis. præd. traxerit ad feodum suum in S. de terra ipsius A.
trecent.

[129] *trecent. acras morae & pasturæ. &c. Unde idem A. dicit quod quidam W. nuper pat. suus fuit seifitus in dominico suo ut de feodo per diversas metas & bondas tempor. pacis tempore, &c. capiend. inde explet. &c. ad valenc. & quod tale fit, jus suum offert, &c. And the Tenant may joyn the Mife by battail or by grand Affise, &c.*

And divers Tenants in common of a Town or Ham-^Alet, may have this Action against him who is Tenant of another Town adjoining, and they shall Count one Count, and shall make their several titles in that Count, and shall alledge the esplees severally in the same Count. Which see in the Book of Entries, fol. 167.

And the Defendant shall make his defence several a-^Bgainst every one of them, or may wage Battail or joyn the Mife at his pleasure, and then the Plaintiffs shall reply thereunto and recite anew their Count, and alledge the Esplees, as before, and then to joyn the Mife with the Tenant upon the meer Right, or by Battail at the pleasure of the Tenant. And if they do joyn the Mife in the County before the Sheriff, by Battail, it shall be determined there, but not by the grand Affise, &c. And it seem-^Ceth, that Tenant in tail, nor a Parson of a Church, nor Tenant for life shall not have this Writ, for he ought to have an Estate in fee who maintaineth this writ, and summons and severance lieth in this Writ, and the view shall be granted in this Writ. And Joyntenancy or Coparcen-^Dary is a good plea in this Writ, and the Writ may be E brought against several Tenants, who have Tenements in severalty or in common in the other Town,

Writ *Ex parte talis*.

THe Writ of *Ex parte talis* lieth where Auditors are^F assigned unto a Bailiff or Receiver to accompt, and the Auditors will not allow unto the Bailiff or Receiver his reasonable allowances, which they ought to do, but commit him to prison; he who is so imprisoned shall have this Writ *Ex parte talis*, &c. But if a man bring a Writ of accompt, and Auditors are assigned unto him who is Bailiff or Receiver, to take his accompt, and they will not allow him his allowances which they ought to do, &c. he shall not have this Writ of *Ex parte talis* nor any other remedy in that case, for he may shew the same to the Justices, and they shall relieve him.

Note, 13 R. 2. Fitz. Accompt 51. upon this Writ of *Ex parte talis*. the Barons of the Exchequer use to allow an Averm. that the Plaintiff in the Writ hath paid the money by the commandment of the owner, or such special matter without writing or Tally of the same.

And

G And if a plea of accompt be sued in *London* against a Receiver, &c. or in other Court of Record, and the party appear, and Auditors are assigned him by the Court, and they will not allow unto him such allowances which he thinketh they ought to do; he shall have a Writ of *Ex parte talis*, and the Writ is such:

Rex, &c. Ex parte A. capti & detenti in prisoa nostra Linc. pro arrearagiis compoti sui, in quibus B. asserit ipsum sibi tene de tempore quo fuit ballivus suus in M. nobis est ostensum quod auditores compoti predicti per ipsum B. ad hoc deputat. ipsum A. super eod. compoto in debit. gravaverunt, onerando ipsum de receptis, quæ non recepit, vel non allocando ei expens. & liberationes rationabiles, in ipsius A. damnum non modicum & gravamen. Et quia nolumus, quod eidem A. injuriatur in hac parte, Tibi præcipimus, quod si predicti A. per testimonium auditor. compoti liberat fuerit, & invenerit tibi suffic. manucapt. qui cum manucapiant habere coram Thesaurario & Baronib. nostris in Scaccario nostro, ad reddend. præfat. B. compotum suum juxta formam statuti de communi consilio regni nostri inde provis. tunc ipsum A. a prisoa predicta, si ea occasione & non alia detineat in eadem, deliberari fac. per manucaption. supra dicti Et scire fac. predicti B. quod tunc sit ibi cum rotul. & talliis, per quos predicti A. compotum suum prius reddidit ad faciendum & recipiendum in præmissis quod de jure & secundum formam statuti præd. inde fuerit faciendum, & habeas ibi nomina manucapt. illor. & hoc brevis. Teste, &c. Vide Stat. inde Westm. 2. cap. 11.

H And this writ shall be returnable before the Treasurer and Barons of the Exchequer at a certain day, as it appeareth by the Writ.

I And if a man have Auditors assigned him in *London* by the party who taketh the accompt, and will not allow his Tallies or other things to be allowed, but commit him to prison, and because he is a stranger in the City he cannot find sureties to bail him to sue his Writ of *Ex parte talis*, &c. Then he may send unto the Chancellor, and surmise in the Chancery, and put in sureties before the King there, and thereupon he shall have a Writ unto the Sheriff of *Lond.* out of the Chancery, rehearsing the matter, and how that he hath found sureties there, according to the Statute, commanding the Sheriff to deliver him out of prison, and the Writ shall be such:

Rex Vic Lond. &c. Ex parte A. &c. (ut supra usque ibi) non modicum & gravamen. Et quia idem A. forinsecus est in Civitate nostra Lond. & ignotus, per quod manucaptiores de eadem

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eadem Civitat. invenire non potest de habend. ipsum coram The-
saurario & Baronibus nostris de Scaccario ad reddend. compt.
suum prædictum & ad faciendum ulterius, & recipiendum quod
Curia nostra considerabit in præmiss. vosque alios manucaptos
quam de Civitate ab eodem A. admittere recusastis, ac idem A.
sufficient. manucaptor. coram nobis in Cancellar. nostra invent,
viz. C.D. & E. de com. Eborac. quam eum manuceperunt habe-
re coram Theaurario vel ejus locum tenente, & Baron. nostris
de Scaccario in quind. Pasche, proxim. futur. ad recitandum
ibidem comptum suum prædict. & ad stand. resto in præmiss.
secundum formam statuti. de commun. consilio regni nostri inde
provisi Vobis mandamus, quod ipsum A. a prisona prædicta, si
ea occasione & non alia detineatur in eadem. interim deliberari
fac. per manucapt. supradict. Et scire fac. prædict. B. quod
tunc sit, &c. per quos prædict. A. comptum suum prius reddi-
tum supradictum & ad faciendum & recipiendum quod ju-
stum fuerit, & consonum ration. Et habeas ibi hoc Breve,
&c.

And if he do remain in prison, he may sue the *Ex parte* A
talis returnable before the Treasurer and Barons of the
Exchequer, and thereupon he may have another Writ out
of the Chancery directed unto the Treasurer and Barons
of the *Exchequer*, that they take sureties of him who is
in prison according unto the form of the Statute; and
that they deliver him out of prison, and shall have ano-
ther Writ unto the Gaoler, that he send his Body before
the Treasurer and Barons of the *Exchequer*, and that he
deliver the Body when the Treasurer and Barons send
him a Writ so to do, &c. which Writ appeareth in the
Register.

And if a man be committed to prison by Auditors for
arrearges of his accompt, and afterwards escape out of
prison, the Gaoler shall satisfie the party at whose suit he
was committed, and the Gaoler shall have a special action
upon the Case upon the prisoner to answer the escape
and the damages which the Gaoler hath sustained,
which writ is among the writs of *Ex parte talis* in the Re-
gister; But it seems reasonable that the Gaoler may take
the party again, and so is the opinion of some Books.

VI. 6 H. 7.
11, & 12.
10 H. 7. 25.
13 E. 4. 9.
14 H. 7.

Writ

*Writ of Execution upon a Statute
Merchant.*

C **A** Writ of Execution upon a Statute Merchant lieth in case, where a man is bounden in a Statute Merchant before any Mayor or Bailiff of a Corporate Town, who have power to take such Bonds or Recognisances, to pay a certain sum of money at a day, at which day he doth not pay the same, then he to whom the Obligation or Recognisance is made, may come before the Mayor, or him before whom the Bond or Recognisance was taken, and pray him to certifie the same into the Chancery under his seal according unto the Statute of *Acton Burnel*, and if he will not certifie the same as he ought to do, then the Recognisee may have such Writ directed unto the Mayor :

Rex dilectis sibi Majori Linc. & T. Clerico ad recognitionem debitorum apud L. accipiendum deputatis salut. Ex parte I. nobis est ostensum, quod cum R. ann. regni nostri decimo, coram W. nuper Majore ville Linc. & H. nunc Clerico ad hujusmodi recognitiones in eadem villa accipiendas deputato, recognovisset se debere prefat. 24 l. juxta formam statuti dudum apud Acton Burnel pro mercator. editi, certis terminis solvend. & licet termini solutionis predicti jam diu sunt elapsi, idemque I. vos sapius requisierit, ut nos in Cancellar. nostra de recogn. predicti juxta formam statuti predicti certificaretis, & vos tamen nos in Cancellar. nostra predicti super recognitione predicti hucusque certificari distulistis, & adhuc differtis, unde quam plurimum admiramur. Vobis mandamus quod scrutatis rotulis de hujusmodi recognit. cor. prefat. W. & H. ann. predicti factis in custodia vestra, ut dicitur, existentibus, si invenieritis recogn. predicti in forma predicti facti fuisse & terminos solutionis predicti elapsos fuisse, & nos in Cancellar. nostra alias inde certificat. non fuisse, tunc nos in eadem Cancellar. super recognitione predicti distincte & aperte, juxta formam statuti predicti sub sigillo pro recognitione mercatorum ibidem deputatis certificetis ut alterius super hoc fieri faciamus, quod secundum formam predicti statuti fuer. faciendum.

And if he will not certifie by this Writ, he may sue an *Alias* and a *Pluries* and Attachment against the Mayor and Clerk, and it appeareth by this Writ, that if an Obligation be once certified in the Chancery it ought not to be certified again without *Affidavit* made, that execution was not sued upon it, and then he shall have a special Writ unto the Mayor for it, for then it shall be taken as a several Obligation upon every Certificate,

But if a Statute Merchant be a knowledge - ed to one who is absent it shall not bind the Commission if it be not delivered to the Commisee, as it seemeth by 20 E. 3. Fitz. acc. compt. 79.

And also it ought to be certified under the Seal of him **E** who is deputed to seal the Obligation. And if the Mayor **F** do make his Certificate unto the Chancery, then the party shall have a Writ to execute the Statute, thus :

Rex Vic. Linc. salut. Quia A. de B. coram. C. & C. clericis ad recognit. debitorum apud L. accipiend. deputat. vel sic, coram D. Majore : vel sic, coram L. nuper Majore Civitatis nostræ Line & F. Clerico, vel, tunc Clerico ad recognitionem debitorum apud L. accipiend. deput. recognovit se debere E. 10. libras quas ei solvisse debuisset ad festum, &c. ann. &c. & eas ei nondum solvit ut dicitur ; Tibi præcipimus, quod corpus prædict. A. si laicus sit, capias & in prisona nostra salvo custodir. facias, donec idem E. de prædicto debito vel executione, testamenti prædict. E. de prædict. 10. l. plene satisfecerit. Et qualiter hoc præceptum nostrum fuerit execut. nobis scire facias in Octabis S. Hill. ubicunque. &c. per literas tuas sigillat. & habeas, &c.

And this Writ may be returned as well into the common Pleas as Kings-Bench. And if a man make a Statute Merchant of 100 l. payable at divers days, if he fail of payment at any of the said days, the Recognisee shall sue execution at that day, and shall not stay his execution until all the days are past, as he shall do of an Obligation.

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Contrary in
Covenant
or if he as-
sent to pay,
by 5 Ma.
107.32 H.6.
com. 14 H.8.
14. Brudenell.

If a man be bound to pay 20 l. at divers days, he shall not have an Action of Debt upon the bond, until all the days are past. But if he who is bounden in a Statute Merchant be a Clerk or Abbot, &c. then the Writ of Execution is of another form, viz.

Rex &c. quia A. persona Ecclesie de B. coram, &c. præcipimus tibi quod prædict. 10. l. de bonis & catallis ipsius A. in balliva tua mobilibus sine dilatione levare, & eund. E. habere fac. Et qualiter hoc præceptum, &c.

For a Clerk shall not be arrested by his body upon that Statute, and if process be awarded to arrest him, by that statute he shall have a Writ unto the Sheriff, that he do not trouble or molest him, and if he have arrested him for the same, that he deliver him, if he know no cause why he should not enjoy the privilege of a Clerk: And in some such Writ there is a proviso put in the end of the Writ, thus :

Proviso quod præd. decem libr. de terr. bonis & catallis ipsius A. si non levata fuer. juxta formam statuti prædict. levantur, ut est justum, &c. Teste, &c.

If a man be bounden in a Statute Merchant in 20 l. and **B** the Statute at the suit of the Recognisee is certified in the Chancery, and afterwards he dieth, his Executors may have a special Writ unto the Mayor, reciting the Certificate

ficat^e before them, commanding them to certifie the same again into the Chancery, and the writ is such :

Monstraver. nobis L. & W. execut. testament. L. de B. quod cum R. &c. (ut supra usque ibi) juxta formam statuti præd. certificaretis : vos tamen pro eo quod per rotulos vestros invenistis quod Cancellar. nostra super eadem recognition. alias esset certific. quicquid inde facer. non curastis, ac præd. execut. coram nobis in Cancellar. nostra personaliter constituti asseruerunt, aliquam execut. recognit. prædict. in vita ipsius L. seu post mortem suam virtute certificat. inde in Cancell. prius fact. nullatenus fact. fuisse, & nobis supplicaver. ut sibi in hac parte velimus de remedio providere. Et qui eisdem execut. quatenus jussu poterimus in hac parte velimus subvenire, vobis mandamus, quod scrutat. rotul. vestr. hujusmodi recognit. contingent. si invenerit. recognit. illam in forma prædicta factam fuisse, & terminos solution. transactos esse, ut est dictum, tunc nos in Cancellar. nostra super recognit. præd. distincte & aperte sub sigillis vestris pro recogn. debitor. ibidem deputat prout moris est, certificetis, non obstante Cancellar. nostr. prius inde extitit certificata. Teste, &c.

A But this Writ is not granted but upon Affidavit and oath made by the Executors in Chancery, or by him who would have that Execution.

Writ of Execution upon a Statute Staple.

B AND if a man be bounden before the Mayor of the Staple in a certain sum, to pay at a certain day, &c. and he do not pay it according to the Statute ; then he to whom the Obligation is made, shall come before the Mayor and shew him the Statute, and pray him to certifie it under the seal into the Chancery, as he shall do upon a Statute Merchant. Or the Mayor may award Execution if the party be dwelling within his jurisdiction, or have Lands or goods there, &c. And if the Mayor will not certifie at the request of the party, then he shall have a Writ out of the Chancery unto the Mayor to certifie the same, as he shall have upon a Statute-Merchant shewed in Chancery; and upon the same an *Alias*, and a *Pluries*, and Attachment against the Mayor if need be ; and when the Mayor hath certified the Statute under the Seal, then the Writ of Execution shall issue forth against the party, to arrest him, and to extend his Lands, &c. and this Writ shall be always returnable in the Chancery, and not in the King's-Bench nor Common Pleas, as the writ which issueth forth to do execution upon a Statute-Merchant, and the form of the Writ is such :

Ve. 45 E. 3.
22 Finchden. Execution shall be sued first of the goods, and then of the lands.
But 7 R. 2. Execution 46. the party hath his Election to take one or the other, and so is the use at this day.

Rex Vic. Linc. salut. Quia R. de W. xx. de Septembr. & ann. &c. coram E. de B. Majori stapul. nostr. de B. ad recogn. debitor. in eadem Stapula accipiend. deputat. recognovit se debere W. de F. octo libr. &c. quas ei solvisse debuit in Festo &c. tunc &c. Et quas ei nondum solvit, ut dic. Tibi precipimus qd' corpus præd. R. si laicus sit cap. & in prisona nostra donec eidem W. de præd. debito plene satisfecerit, salvo custod. & omnia terras & catall. ipsius R. in balliva tua per sacrament. proborum & legalium hominum de balliva præd. quo rei veritas melius sciri poterit juxta verum valorem eorund. diligent. extendi & appreciar. & in manum nostram seisiiri fac. & ea præf. W. quousque sibi de debit. præd. satisfact. fuer. libert. ac juxt. form. ordination. inde fact. Et qualiter hoc precept. nostrum fuerit execut. scire fac. nobis in Cancell. nostr. in Crastin. animarum proxim. futuro ubicunque tunc ferit per literas tuas sigillatas, & habeas ibi hoc breve, &c.

And by this writ it appeareth that the Sheriff may arrest the Conusor, and extend and take his Lands, Goods and Chattels, and return the same extent in Chancery, &c. And thereupon the Conusee may sue a writ unto the Sheriff out of the Chancery to deliver him the lands and goods to the value of the Debt, which writ is called *Liberate*, and is such :

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Rex Vic. &c. Cum R. de W. xx. die (usque ibi) per literas tuas sigillatas, & tunc sic : *Ac tu nobis retinasti, quod præd. R. non fuit inuentus in balliva tua, postquam breve nostr. tibi liberat. fuit, sed quod cepisti in manus nostr. omnia terras & tenementa & catalla ipsius R. in dicta ball. tua, & ea extendi & appreciari fecisti juxta tenorem brevis nostri præd. viz. duas partes unius messuagii. que appreciant. ad quinq; libras, Tibi precipimus, quod eadem A. omnia terras & tenementa, & catall. præd. per te in manus nostras sic capta, si ea per extent. & apprec. præd. habere voluerit liberes. habend. juxta form. ordination. præd. quousq; sibi de debito præd. fuer. satisfact. Et qualiter hoc preceptum nostrum fueris execut. scire fac. in Cancell. nostra in quinden. Pasche prox. futur. ubicunque; tunc fuerit per literas, &c., Et habeas, &c.* A

And if a man be bounden before the Mayor of the Staple or in a Statute Merchant before another Mayor, &c. and have no Lands but in *Durham*, or other County Palatine, Then upon the Certificate of the Stat. made by the Mayor, &c. upon the Return of the Sheriff, that he hath not Lands nor tenements within his Bailiwick, the party may surmise that he hath not any thing but in the County Palatine, &c. and pray that the Tenor of the Record may be sent thither, to have execution done, and upon that surmise he shall have such Writ.

Writ to do Execution in a County Palatine.

R Ex venerabili in Christo patri Leadem grat. Dunelm Episc. vel ejus Canc. in Episcopatu præd. salut. &c. Tenore cujusdam statuti de stapula facti coram W. de W. nuper Majore stapul. Westm. ad recognitiones debitorum in eadem stapula accipiend. deputat. de xl. li. T. de W. jam defunct. ut dicit, & E. de R. civ. Lond. per Agnetem quæ fuit uxor H. de R. Episcopat. Dunelm. nuper recognitis, & per N. B. nunc Major. dict. stapula in Canc. nostram missi: vobis mittimus presentibus interclusum, ut inspecto tenore præd. ulterius ad prosecutionem Katharine quæ fuit uxor præf. T. I. F. & R. de L. executor testamenti præd. T. executionem recognitionis præd. fieri fac. prout de jure & secund. legem & consuetud. regni Angl. fuerit faciend. Teste, &c.

B And if the Statute be not sufficiently certified in the Chancery by the Mayor, &c. because he hath omitted any part of the Bond, as the Name, or Sur-name, or other matter material, then upon Affidavit made, that he hath not had execution by reason of that Certificate, he shall have a new writ unto the Mayor and Clerk, &c. to certify the Statute fully again into the Chancery, notwithstanding his Certificate made before, and that Writ doth appear in the Register.

If the Mayor doth make a Certificate of the Statute into the Chancery, and delivereth the same unto the Recognisee, and the party keepeth the Certificate, and will not put it into the Chancery; and afterwards another is made Chancellor, the party ought to have a new Certificate to that Chancellor, otherwise he shall not have execution of the Statute upon that Certificate made to the old Chancellor which was not delivered in time into the Chancery: and then he ought to sue a Writ in Chancery directed unto the Mayor, to make a new Certificate, and the Writ shall be such;

Rex, &c. Majori Stapule Westmon. ad recognitiones debitorum in eadem stapula accipiend. deput. salut. Ex parte D. &c. nobis est ostens. quod cum W. de E. &c. ann. regni nostri tertio coram vobis in stapula præd. recogn. se debere præf. A. xl. li. juxta formam statuti stapula præd. cert. termin. solvend. & licet vos termino solution. præd. elapso K. Episc. London. nuper Cancellar. nostro dum in officio Canc. stetit, sub sigillo officii vestri, prout moris est, certificaveritis, quia tamen præd. D. dictam certificat. penes se hucusque retinuit, & præf. R. nuper Canc. cui prius nominatim inde certificastis, ab officio suo Canc. a diu est & extitit onerat. Volumus, & vobis mandamus, quod dictam certific. præf. nuper Canc. per vos sic fac. sane &

Note, 2 R. 3. 7. 3. Several Certificates were made upon one Statute. But it cannot be intended but that they were there sever. at Srantes. And note, That several writs were awarded upon them 10 several Sherriffs.

integr. vobis restit. & scrutatis rotulis de huiusmodi recognitione coram vobis ann. præd. factis, si inveneritis recognition. præd. factam fuisse, tunc Canc. nostro moderno in eadem Canc. super recogn. præd. distinct. & apert. juxta form. stat. præd. sub sigillo pro recognitionibus stipulæ præd. deputat. certificet. indilate, ut ulterius super hoc fieri faciamus, quod secundum formam statuti præd. fuer. faciend. dicta certific. prius sic facta non obstante. Teste, &c.

But note, That if in the first Certificate he hath not expressed the name of the Chancellor, that then he may deliver that Certificate to the new Chancellor, and sue execution upon it, and therefore it is good to make the Certificate general to the Chancellor without naming his name.

Recognisance in the County before the Sheriff.

[133] **I**F a man doth acknowledge in the County before the Sheriff to pay to another a certain sum of money at a day certain, and do not pay it at the day, then the Recognisee shall have a Writ out of the Chancery unto the Sheriff, commanding him to do execution upon that Recognisance, and the Writ shall be such :

Rex Vic. &c. Monstravit nobis A. quod cum ipse implacitasset in Com. tuo per brev. nostrum B. & idem B. in pleno Com. illo recognovit se de debere præf. A. certam pecuniam ad certum termin. reddend. tu tamen termino illo elapso, eandem pecuniam eidem A. nondum solutam ad querimoniam secundæ recognitionem suam habere non fecisti, in ipsius A. damnum non modicum & gravamen. Et quia eid A. prout justum fuerit subvenire volent. in hac parte Tibi præcipimus, quod si ita est, tunc pecuniam illam de bonis & catallis ipsius B. in balliva tua levare, & illa præf. A. sine dilatione habere fac. ne clamor ad nos inde perveniat iteratus. Teste, &c.

But it seemeth Recognisance shall be made when a plea is depending in the County before the Sheriff by Writ between the parties in debt, &c. but if there be not any plea depending in the County by Writ, but by plaint, *Quare*, if that Recognisance shall be made; and it seemeth reasonable that it may be taken, as well when the plea of debt is depending in the County before the Sheriff by plaint, as if it were by the King's Writ.

But if a man come into the County before the Sheriff, & there in Court acknowledge to pay a certain sum of money, unto another at a certain day, &c. where there is not any plaint or action depending, betwixt the parties, whether this acknowledgment shall be good or not, *Quare*. And it seems

seems reasonable; That if it be under the sum of 40 shillings, that such acknowledgm^t shall be good, and bind the party.

A And if the party have a writ to the Sheriff to do Execution of such Recognissee (as before is said) and the Sheriff will not do the same, then the Recognissee may sue an *Alias* and a *Pluries*, and attachment against the Sheriff, and the form of the Writ is such :

Rex, &c. Ex parte A. accepimus, quod cum nuper tibi præceperimus, quod si B. recognosceret se debere A. tantum, tunc ipsum B. distringeres ad præd. debit. eidem A. sine dilatione reddend. ac licet idem B. coram te recognoverit se debere præf. B. præd. debit. tamen ipsum B. ad debitum illud reddend. distringer. hætenus distulisti, & adhuc differs, in ipsius A. damnum non modicum & gravamen : Et ideo tibi præcipimus, quod si ita est, tunc execution. recognitionis sine dilatione fieri fac. juxta tenorem mandati nostri præd. & hoc nullo modo omittas. Teste, &c.

But it seemeth by this Writ, that if the Recognisor will not again acknowledge the debt before the Sheriff when he cometh to him to do execution, &c. but say that he hath paid the same, That then the Sheriff ought not to do execution. And there is another Writ in this form :

Rex Vic. &c. Præcip. tibi, quod si A. recognovit se debere B. centum solid. tunc ipsum A. distr. ad præd. debitum eidem B. redd.

And he may have an *Alias* and a *Pluries* and *Attachment* upon the same, &c. And if the Sheriff return upon the *Alias*, quod distrinxit partem per frument. vel per alia catall. ad quod non invenit emptores, Then by the title of the Register shall be awarded a writ of *Pluries reitendo returnable*, & illud insuffic. reputand &c. But *Quære* tamen of that ; for it seemeth to be a good return ; and *Quære* if the Sheriff may sell the goods to pay the Recognisance, for it seemeth by the Register he may sell the parties goods.

C And if a man be in Execution upon a Statute Merchant, he ought to be found in Prison for the rent and revenues of his Lands which are in Execution, &c. that is to say, with bread and water, as appeareth by the Statute ; and if he have not the same, he may sue a Writ upon the Statute directed to the Mayor and Sheriff, where he is in Execution that he have the livelihood which the Statute giveth him, and the Writ is such :

Rex Majori & Vic. Lon. salut. Cum in statuto de Mercator. edito contineat, quod mercatores pro quorum debitis contigerit debitores suos per formam statuti, prædict. arrestari & imprisonari, invenire teneantur debitoribus illis in prisona commorant. panem & aquam ad sustentationem suam. Vobis præcipimus, qd.

Writ de Perambulatione faciend.

W. de S. pro debit. E. de K. per formam statuti. nostri præd. ut dicitur arrestat. & in prisona nostra detent. si ea occasione & non alia detineatur in eadem, fieri fac in hoc casu, quod fuerit faciend. & in casu consimili fieri consuevit. juxta form. Statuti præd. T. &c. And upon that he may have an *Alias*, *Pluries*, & *Attachment*.

Writ de Perambulatione facienda.

A Writ de Perambulat' facienda, ought to be sued with D the assent of both Parties, where they are in doubt of the bounds of their Lordships, or of their Towns; then they by assent may sue this Writ, directed unto the Sheriff to make the Perambulation, and to set the Bounds and Limits between them in certainty: and the Writ is such;

Rex Vic. &c. Præcipimus tibi, quod assumpt. tecum 12. discretis & legal. Milit. in com. tuo, in propria persona tua accedas ad terram A. de B. in N. & terram C. de D. in E. & per eorum sacramentum fieri fac. perambulat. inter terram ipsius A. de N. & terram ipsius C. de D. in E. ita qd. perambulat. illa fiat per certas metas & diuisas: quia prædict. A. & C. posuerunt se coram nobis in perambulationem illam, & scire fac. Justic. nostris apud W. &c. tali die vel Justic. ad primam assis. &c. sub sigillo suo & sigillis quatuor legal. Milit. ex illis quæ perambulat. illi interfuer. per quas metas & diuisas perambulatio illa facta fuerit, & habeas ibi nomina Militum, & hoc breve.

And the King may make his Commission to other persons A to make that Perambulation, as well as to the Sheriff, and to certifie the same into the Common Pleas, or in the Chancery, or elsewhere, &c. And such Commission is oftentimes granted to make perambulation of three or four Counties where they are in doubt in the Bounds and Limits thereof; and this perambulation made by assent, shall bind all the parties and their heirs.

But if Tenant for life be of a Seigniori, and another who B is Tenant in Fee-simple of another Seigniori adjoyning sue forth such a Writ or Commission, by reason whereof a Perambulation is made, it seemeth the same shall not bind him in Reversion; neither shall the Perambulation made with the assent of Tenant in tail bind his Heir.

And the Perambulation may be made for divers Towns, and in divers Counties, and the parties ought to come in person into the Chancery, and there acknowledge and grant that a Perambulation be made betwixt them, and the acknowledgment shall be enrolled in the Chancery, and thereupon a Commission or Writ shall issue forth. And if the Parties C

Parties cannot come in Chancery, then they ought to sue forth a Writ of *Dedimus potestatem* directed to certain persons, to take their acknowledgment, and to certify the same into the Chancery under his seal &c. and then upon that Certificate returned into the Chancery, That Commission or Writ may be granted, although the parties do not appear in person in Chancery to pray the same.

Writ de Warrantia Chartæ.

D THE Writ of *Warrantia Chartæ* lieth properly where a man doth enfeof another by deed, and bindeth him and his heirs to warranty, &c. Now if the Defendant be impleaded in an Assize, or in a Writ of Entry in the nature of an Assize, in which actions he cannot vouch, then he shall have that writ against the Feoffor or his heir, who made such warranty: and the Writ is,

In a Warrantia Chartæ, the Defendant said that he had a Formedon pendant of the Land and no Plea and

that was against the issue in tail. Itin. North 2 E. 3. Garr. de charters 13. 2 E. 2. Ib. 6.

E Rex, &c. *Præc. A. qd. iuste, &c. warrant. B. unum mesuag. cum pertin. in D. qd. tenet, &c. de eo tenere clam. & unde chartam suam habet, ut dicit. &c. Vel sic: Manerium de N cum pertin. & advocat. Ecclesie ejusdem ville quam tenet, &c. (usque ibi) unde chartam suam habet, vel chartam D. patris vel matris vel alterius antecessoris, cujus hæres ipse est, ut dicit & nisi,*

2 Tenant in Common shall joyn in this Writ. 28 E. 3. 90. 60 where 3. are joynteneants,

and a Release to the other two, 40 E. 3. 41, 42. 16 H. 7. 6, 7. If the Defendant tender a Plea to the Plaintiff, and the Plaintiff will not enter it; he shall not have advantage in this Writ.

And although the Writ doth suppose that he holdeth of the Defendant, yet that is not material whether he holdeth of him or not.

F And also that the Plaintiff holdeth any Land of the Defendant by Homage *Auncest*, and hath not a Charter thereof: yet he shall have this writ of *Warr' Chartæ* against the defendant, and the writ shall say *unde Chartam habet, &c.* and yet he hath no deed to shew, but only shall hold by Homage *Auncestrel*, which implieth a warranty, and therefore in that case, those words, *Unde chartam habet, &c.* are not material.

5 Eliz. Dy. 221. If the warranty be only against the Grantee and his heirs, and there be

not *Dedi & Concessi* in the Charter *per Curiam*, the Writ lieth not.

12 H. 3. Garr. de Charters. 27. One brought this Writ. *Unde Chartam suam habet*: the Defendant said, *Non habet Chartam suam*, and the Plaintiff confessed the same and said it was *Charta antecessoris sui*, adjudged for the Defendant.

If

21 H.6.8.
upon owel-
ty of Ser-
vices, this
Writ lyeth:
but that is
after teisin
of the Ser-
vices.

21 H.6.8.
Upon a Fe-
offment in
Fee with
warranty,
he ought in
his Count
to set forth
the deed 14
E.3.35. acc.

In a *Præcipe*
quod reddat:
where the
Tenant
hath a Re-
lease or
Confirmation
with
warranty

for doubt the possession shall be counterpladed, he shall have this Writ, Wood and Brian. 12 H.7.2.

If a man have a Lease of Lands for life rendring Rent, or G maketh a gift in tail rendring Rent without deed, and after- wards the Lessee or Donee is impleaded in such action where he cannot vouch, then he shall have this Writ of *Warrantia Chartæ* against the Lessor or Donor, or his Heir who hath the Reversion: for that Reversion and Rent reserved, maketh a warranty in it self by the Statute of *Bigamis, cap. ult.* although he hath not any deed thereof.

And if a man give Lands to one in Fee by deed by these H words, *Dedi, concessi, &c.* now he is bound to warrant the Lands unto the Feoffee by those words, and if the Feoffee by impleaded, he shall have a Writ of *Warrant' Chartæ* against the Feoffor, by these words, *Dedi, concessi, &c.* but not against his heir, for the heir shall not be bounden unto a warranty made by his Father, unless he bind him and his heirs to warranty by exprefs words in the deed: as to say, *Ego & hered. mei omnia præd. terras, &c. warrantizabimus, &c.*

But note, That he shall not have the Writ of *Warrantia I Chartæ* against the Feoffor, or against him against whom he hath the warranty, if he be impleaded in any action in which he may vouch him, for then he ought to vouch him to warranty; and if he will not vouch him to action, he shall not afterwards have a writ of *Warrantia Chartæ*.

And a man may sue forth this Writ of *warrantia Chartæ* before he be impleaded in any action, but yet the writ doth suppose that he is impleaded: and if the Defendant appear and say that he is not impleaded, by that Plea he confesseth the warranty, and the Plaintiff shall have Judgment to recover his warranty, so as if the Defendant be after impleaded, and vouch him to warranty, and he entreteth into the warranty, and pleadeth and loseth, and that the Defendant recover in value. The Defendant shall have in value of the Lands against the Vouchee, which he had at the time of the purchase of his *Warrantia Chartæ*, and therefore it is good policy to bring his *Warrantia Chartæ* against him before he be sued, to bind the Lands of the vouchee which he had at that time. For if a man be vouched, he shall not render in

2 H.4. 14. &
12 H.4. 13.
he shall have
in value the
lands which
he had at

the time of Judgment, for the Judgment makes them subject to the Execution, 1 E.3. 11 Fitz Garr. de charter 2. ac. 8 E. 2. Voucher, 237. A man cannot vouch a Clerk attaint, or a man outlawed: but shall rather have *Warrant. Chart. Cont.* of an Idiot *Quod reddat. Quere* if it be Law at this day. Br. Warr. Chart. 29. 8 E.4. 10. Matham acc. 24 E.3. B. *Warrant Chart.* 13 acc. 19 E.3. Garr. Chart. 9. ac.

value

value, but of the Lands which he had at the time of the Vouchee, and if he have aliened the Lands before the Voucher, he shall render nothing in value; and therefore it is policy to bring his *Warrant' Chartæ* against him when he hath the Land to render in value. And upon this writ and Judgment, the Land shall be bound. But if a man recover his warranty by writ of *Warrantia Chartæ*, and hath bounden the Land which the Vouchee had at that time: yet if he be afterwards impleaded for that Land, for which he recovered his warranty, he ought to vouch him against whom he recovered his warranty, to defend the Land, if he be sued in any action wherein he may vouch, otherwise he shall not have advantage by recovery of his warranty in the *Warrant' Chartæ*.

A And if a man recover his warranty in a *Warrant' Chart'*, and afterwards is impleaded in an action in which he cannot vouch, as by Assize, or by *Scire facias* sued forth upon a fine, &c. It seemeth he ought to give notice to him against whom he hath recovered his warranty of the action, and to pray him to shew him what he shall plead for to defend the Land, &c. *Quare tamen* thereof.

B If a man exchange Lands with another by deed, if he be impleaded, he may vouch him with whom the Exchange was made, by reason of that exchange; and also he shall have a writ of *Warrantia Chartæ* by that deed of exchange, although there are not words of warranty in the deed; and the Vouchee shall have a writ of *Warrant' Chartæ, tamen Quar'* of that.

C And if a man be impleaded who is not Tenant of the Land, but pernor of the profits, he shall not have a Writ of

D *Warrantia Chartæ*, because he can lose nothing. And a man shall have a writ of *Warrant' Chartæ* although he may vouch in the action brought against him, and if he do recover in the *Warrantia Chartæ*, and afterwards lose in the action brought against him, in which he hath vouched him against whom he recovered his warranty, Then he shall have a writ which is called *Habere fac' ad valent'*, &c. presently within the year after the recovery, and shall not sue forth *Sci' fac'*. And an assignee shall have a Writ of *Warrantia Chartæ*.

E And a man shall have a writ of *Warrant' Chartæ* of Land or Rent which he demanded against him out of Land, &c. but there he ought to vouch of Land discharged of the Rent, &c. if he may vouch in the action.

F And a man may bring his writ of *Warrantia Chartæ* in what County he pleaseth, if the deed bear not date in a certain place, or County: for then he ought to bring the writ where the deed beareth date. But if a man bring a writ of

Warrantia

23 H. 3.
Gar. Chart-
ters 26.

7 H. 4. 18.
17 E. 3. and
Br. War. ch.
30. None
shall have
the writ but
the Terre-
Tenant
24 E. 3. 25.
Willbye 7 E.
4. 12.
3 E. 4. 7.
A good plea
that he had
nothing in
the Land.
jour de brie.
purchase
19 E. 3.
Gar. ch. 10.
4 E. 3. Gar.
ch. 12. acc.
for Rent
service.

E. 1 Voucher, 266.
21 H. 6 40.
Newton.
See Little.
111. for the
reason of
this case.

Warrantia Charta, by reason of Homage *Ancestral*, &c. then it ought to be brought in the County where the Land lieth.

And if a man doth enfeoff another of lands by deed *G* with warranty, if the feoffee maketh a Feoffment over, and taketh back an Estate in Fee, the warranty is determined, and he shall not have a writ of *Warrant' Charta*, because he is in of another Estate. And so if *A.* disseise *B.* and enfeoff *C.* with warranty who enfeoffeth *D.* with warranty, upon whom a stranger entreteth, in whose possession *B.* the Disseisee releaseth his right, all the warranties are extinct, and if *D.* re-enter, and be impleaded, he shall not have a writ of *Warrant' Charta*, because he is in of another Estate by wrong. But if a man be impleaded for which he purchaseth a writ of *Warrantia Charta* against whom he hath a warranty, and vouch him also in the action; and afterwards depending the action, a stranger who hath ancienter title entreteth upon him, yet that shall not abate his *Warrantia Charta* sued out before. *quod vi.* 21 H. 6.

4 E. 2. Gar. Charters 29. it is but a personal action in the Nature of a Covenant, therefore he shall recover damages. 2 H. 6. 31. It is holden, that in this case he shall recover damages only. But it seemeth by Br. Warr. chart. 31. that if he hath no Land to be recovered in value, that he shall not recover damages *tantum*, nor more than in voucher. *H*

And a man may sue forth divers Writs of warranty of Charters against divers men: and if he have divers warranties against them, he shall recover severally against them.

And a man may sue a writ of *Warrant' Chart'* at the common law for a warranty made of lands in ancient demesne. *K*

And if a man have a writ of *Warrant' Charta* depending, although that the Plaintiff who brought the action against him who brought the *Warrantia Charta* be Nonsuit in his action, the same shall not abate the writ of *Warrant' Charta*, although he hath not an action sued against him for the Land, &c. *L*

Writ de Mesne.

18 H. 3.
Mesne, 78.
adjudged
that the
Mesne ought

THE Writ of *Mesne* lieth where there is Lord, Mesne, *M* and Tenant, and each hold by Owelty of Services, as by Homage, Fealty, and 20 *l.* Rent yearly. Now if the Tenant be distrained by the Lord Paramount for the Rent to acquit the Tenant against all Lords Paramount, 29 E. 3. 34. acc.

or Service of the *Mesne* behind, he shall have a writ of *Mesne* against the Lord who is *Mesne*, and by the writ he shall recover his damages if he be distrained, otherwise not: and by that writ he shall be compelled to do the Service, and to pay the Rents: and the writ may be sued in the County before the Sheriff, and the writ is:

Rex Vic. &c. Præcipimus tibi, quod Justic. A. qd. juste, &c. acquietet B. de servic. quæ C. ab eo exigit de libero tenemento suo qd. de præf. A. tenet in I. & unde querit. qd. pro defectu ejus distrin. sicut rationabil. monstrare poterit, quod eum acquietar. debeat, ne amplius, &c.

Note, that the Plaintiff in a Writ of *Mesne* needeth not in the Court to shew the

certainty of the Tenure between the *Mesne* and the Lord Paramount, but generally to say, that he holdeth over, per 38 H. 6. 12. and 39 H. 6. 29. 13 E. 4. 6. If there be Lord, *Mesne*, and Tenant, and the Tenant is distrained by the Lord for which he bringeth a *Replevin*, the Lord avoweth upon a stranger; The Tenant may have a Writ of *Mesne*: yet the *Mesne* cannot joyn because the avowry is made upon a stranger.

And if it be sued in the Common Pleas, the Writ is: *Rex Vic. &c. Præc. A. qd. juste, &c. acquietet B. de servic. qd. nos ab eo exigimus de libero tenemento, &c. unde idem A. qui medius est inter nos & præf. B. eum acquietare debet, & unde queritur, quod pro defectu ejus distringit. & nisi, &c.* And this writ is where the King distraineth for services, &c.

And if another person be Lord Paramount, then the writ is; *Quod acquietet B. &c. quæ C. de eo exigit de libero tenemento, &c. unde idem A. qui medius est inter C. & præf. B. eum acquietare debet, &c.*

A And the Writ of *Mesne* may be sued and removed out of the County, at the sute of the Plaintiff by a *Pone* without cause, and at the suit of the Defendant with cause shewed, as in a *Replevin*.

And a man may have an acquittal, and sue forth a writ of *Mesne* upon it divers ways. One if the *Mesne* grant unto his Tenant by his deed, upon his Tenure made of him to acquit him against his Lord Paramount, he shall have a writ of *Mesne* upon that Grant. Another cause of acquittal is, where he holdeth in Frankalmoigne. Another cause is, where he holdeth in Frankmarriage; or where he holdeth by the like Service as the *Mesne* holdeth over, which is called Owelty.

B And also a man may have an acquittal by prescription, as if he hold by Homage *Ancestrel*.

C And also by Conuſance in a Court of Record for to acquit him, &c. And the men of *Cornwall* claim to plead a Plea

[136]
14 E. 3.
Mesne 7.
38 H. 6. 12.
39 H. 6. 29.
Prisot.

Plea in a writ of *Mesne* in the Countrey without writ, and that they have had allowance thereof in Eyre. And although the writ of *Mesne* be depending betwixt the *Mesne* and the Tenant paravail, yet the Lord shall distrain the Tenant paravail for the Rents and Services, and shall not tarry until the writ of *Mesne* be ended betwixt them, whether he ought for to acquit the Tenant or no.

7 H. 4. 12.

And if a man bring a writ of *Mesne* where he is not distrained, yet the writ is maintainable, but then he shall not recover damages: for the writ is brought only for to recover the acquittal, &c. As if he bring a writ of warranty of Charters where he is impleaded, &c. he is to recover the warranty *pro loco & tempore*.

4 H. 6. 25.

4 E. 4. 35.

11 H. 4. 55.

And if the Tenant holdeth by the Services which the *Mesne* holdeth over, and also by other Services, it is a good owelty to have acquittal, because it is such, and more. And although that the Lord dieth depending the writ of *Mesne*, yet the writ shall not abate.

25 H. 6.

Mesne 12.

And Tenant for term of life where the remainder is over in Fee, shall have a writ of *Mesne* against the *Mesne*: but Tenant for life shall not have a writ of *Mesne* against him in the Reversion. But Tenant in Dower shall have a writ of *Mesne* against him in the Reversion, because she hath her state by the Law.

98 H. 6. 12.

Prifot.

50 E. 3. 23.

And if the *Mesne* have paid the Services unto the Lord Paramount yet if the Tenant be afterwards distrained for those Services, he shall have a writ of *Mesne*. But it is a question whether he shall recover damages in that writ. But it seemeth he shall have damages, because the *Mesne* shall recover damages against the Lord, if he will put his Cattel in the Pound for the Tenant, and sue a *Replevin*, &c. and yet not distrained in his default is a good Plea in a writ of *Mesne*. And if he pay the Services, he is not distrained in his default: for if the *Mesne* grant unto the Tenant to acquit him after the Tenure made, he shall have a writ of *Mesne* thereupon, as I conceive.

4 E. 4. 35.

Bling. acc.

14 E. 2.

Mesne.

And the Husband and Wife shall have a Writ of *Mesne* where they are distrained for the Lands of the wife.

12 E. 3.

Mesne 12.

10 E. 3. 58.

ibid 21.

8 E. 3. 26.

Mesne 19.

If the *Mesne* grant the *Mesne*alty for life, and the Tenant attorn, the Tenant shall not have a writ of *Mesne* against the Grantee for life. But Tenant in tail shall have a writ of *Mesne*: and ancient *Demesne* is a good Plea in a writ of *Mesne*.

And a writ of *Mesne* lieth against Tenant for life where the remainder is over in Fee: and the writ of *Mesne* shall be maintainable against the Heir of the *Mesne* where his ancestors

ancestors have granted the Services of the Tenant by fine, if the Tenant hath not attorned according to the fine: for he shall not be compelled to attorn without granting acquittal unto him: and if he grant acquittal, &c. he shall have a writ of *Mense* upon the Grant; and yet it commeth after the Tenour.

M And if the Tenant be distrained for the relief of the Mesne, or for reasonable aid, &c. he shall have a Writ of *Mesne* against him. 39 H. 6. 29.
38 E. 3. 34.

If a man be Tenant by the curtesie of a Mesnalty, &c. if the Tenant be distrained, the Writ of *Mesne* shall be sued against him in the Reversion, and not against the Tenant by the curtesie. H. 4. E. 2.

Q A Seigniorie is granted unto the Husband and wife, and to Mesne 52. the Heirs of the Husband, and in a *Per quæ servitia* sued by them, the Tenant will not attorn, unless they will grant to acquit him, &c. for which the Husband grants for him and his Heirs, to acquit the tenant and his Heirs, and afterwards the Husband dieth; the Tenant may bring a Writ of *Mesne* against the Husband's Heir, during the life of the Wife who was Tenant for life, and good. *Quod Vi.* H. 5. E. 3.

P And in the time of E. 1. the Tenant brought a writ of *Mesne*, 56. because he did not acquit him of a Rent charge demanded, &c. because he by his Deed bound him and his Heirs to warrant and acquit him, and it was maintainable

Q And an Abbot sued a writ of *Mesne*, by reason of the confirmation made unto him in *Frankalmoine*, and it was 5 E. 2. Mesne 64. maintainable. H. 2. E. 2.

R If a man have Judgment to recover his acquittal in a writ of *Mesne*, if he be not afterwards acquitted, he shall have *And a Scire facias against the* upon the Recovery a *Distingas ad acquietandum* against the Lord. 14 E. Mesne 7. Mesne, if it be three or ten years after the Judgment given; and that is given by the Statute of *Westmin.* 2. cap. 9.

S If the *Mesne* do acknowledge acquittal by fine, and after he sueth a *Scire facias* thereupon, and he appeareth not at the return of the writ, then shall issue a writ of *Distingas ad acquietandum*, &c. and an *Alias & Pluries*, &c. until he appear; and if he come upon the *Distingas*, and cannot plead any thing, but that he ought for to acquit him, then the Plaintiff shall recover damages against him.

T And if the Ancestor do acknowledge an acquittal in a Court of Record, the Tenant shall have *Scire facias* against the Heir to acquit him without other specialty, &c. 46 E. 3. 31.
14 E. 3.
Mesne 7.

V And if a man recover acquittal of a Writ of *Mesne*, &c. 46 E. 3. 31. he shall after have a *Distingas ad acquietandum*, and if he do

[137] do not appear, he shall be forejudged by default of his Mesnalty; and so if he appear, and it be found by Verdict against him, he shall be forejudged.

Old. N.B. 83.
21 E. 3. Br.
suit 4 E. 3.
42.

And a man shall have a writ of *Mesne* to acquit him of A
suit unto a Hundred which the *Mesne* ought to do by reason
of his Mesnalty, and not by reason of Resinancy, &c. And the
process in a Writ of *Mesne* is Summons, Attachment, and B
Distingas; and if the Defendant hath not any thing in
the County by which he can be distrained, Then the Plain-
tiff may surmise that he hath Assets in another County, and
pray a *Distingas* thither, and he shall have it by the Statute;
and upon that he shall be forejudged, &c. if he do not ap-
pear, and the Writ be served and returned against him. But
that is given by the Statute: for at the Common Law he
shall not have but Distress infinite in the same County
where the Writ was brought, and that is in the County
where the Land is; and at this day he may choose whe-
ther he will sue the Process at the Common Law, Distress
infinite in the County, or the Process which is given
by the Statute, Summons, attachment, and the grand distress,
which shall have day to answer by such times as two Coun-
ties may be holden, in which the Sheriff shall make procla-
mation that he come to answer the Plaintiff; and if he do not
come, and the writ be returned, then he shall be forejudged.

Writ de Plegiis acquietandis.

THE Writ de Plegiis acquietandis lieth, where a man be-
comes Pledge or Surety for another to pay a certain C
sum of money at a certain day, &c. if the Party doth not
pay it at the day, &c. If he who becomes Surety be com-
pelled to pay the money, he shall have this Writ against
him who ought to have paid the same. But it hath been
a question whether this writ lieth without shewing a spe-
cialty; and it seemeth reasonable that it be maintainable,
although he have not any specialty to prove it. For the
writ as it seemeth is given by the Statute of *Magna Charta*,
cap. 8. which is; *Quod si plegii voluerint, habeant terras*
& *tenementa debitoris quousque sit his satisfacti de debito, quod*
antea pro eo se solverint. And there is not spoken of any
writing made betwixt them; and if he have a writing,
then he may have remedy thereupon by the Common Law,
or by writ of Covenant, or Debt; and then that Statute
needed not to have been made. And *Pasch.* 43 E. 10.
it is adjudged, That the Writ de Plegiis acquietandis lyeth
without any specialty shewed thereof, and it seemeth good
reason:

Vi. 22. Fitz.
Dy. 378.

Fitz. Pledges
9 thtee it
was alledg-
ed that the
custom of
London was
such.

reason : because the Statute makes the Tie in that Case, and that appeareth by the Register, because Writs are given for the Executors of him who became pledge, and against him who was the Debtor, because their Testator did not acquit his Sureties. &c. And this Writ is *Vicotiel*, and may be sued in the County before the Sheriff, or in the Common Pleas by a *Præcipe*. And the form of the Writ is such :

Rex Vic', &c. *Præcipimus tibi, qd. Iustices A. qd. iuste, &c. acquiet. B. de 20 s. unde posuit se in plegium 5 s. C. & eum nondum acquietavit, ut dic. sicut rationabiliter monstrare poterit, quod eum inde acquietare debeat, ne amplius, &c. pro defectu Just. &c.* And the form of the Writ for the Common Pleas is such : Rex, &c. *Præcipe A. quod iuste, &c. acquietet B. de cent. marciis, unde posuit se in pleg. versus C. & eum nondum acquietavit, ut dic', &c. & nisi, &c. Vel sic pro Executoribus, quod acquietet B. & C. execut. testamenti D. de 10 li. unde posuit prædict. D. in pleg. versus, &c. & eos nondum, &c. Vel sic versus Executors, Præc. A. & B. &c. execut. testament. &c. qd. iuste, &c. acquietent E. de, &c. unde idem E. posuit se in pleg. versus D. & eum nondum, &c.*

E And if a man become Surety for another in the Exchequer to accompt for him, and doth not, he shall have a Writ against him to discharge him of the accompt, and the writ is:

Rex, &c. *De acquietando A. de quodam compoto quem præd. B. pro se de tempore quo idem A. fuit ball. libertatis If. regine Angl. matris nostr. in com. D. coram Thesaur. & Baron. nostris de Scac. reddere manucepit, un. posuit eum in pleg. versus nos in Scac. præd. & eum nondum acquietavit, &c.*

F And if a man become Surety for another to pay a certain sum of money, or to do other thing, &c. so long as the principal Debtor hath any thing and is sufficient, his Sureties shall not be distrained by the Statute of *Magna Charta*: and if they be distrained by the Sheriff, &c. they shall have a special Writ upon the Statute for to discharge them. And the Writ shall be such :

Rex Vic', &c. *Monstraverunt nobis A. & B. quod cum ipsi devenissent pleg. C. versus D. de quadam summ. pecun. in qua idem C. præfat. D. tenebatur, ac idem C. satis habeat, unde prædict. debitum solveret, tu nihilominus ipsos A. & B. distring. ad solvend. præf. D. pecuniam prædict. Et quia injustum est, quod plegii aliqui ad solution. debiti compellant. quamdiu principales debitores sufficient. habeant, unde debitum suum reddere possunt, Tibi præcipimus, qd. C. distring. ad præd. pecuniam solvend. & præf. pleg. suos pacem inde habere permittas & averia sua,*

B b

VI. 39 E. 3. g.
by Kneve.
Br. pledges
12 the Plt.
ought to
have the
Writ first a-
gainst the
party; and
if he be in-
sufficient,
then against
the Pledges
Mag. Charta
cap. 1.

fi

*si quæ ea occasione ceperis, sine dilatione deliberari facias. Te-
tu, &c.*

[138]

And it seemeth that this Writ lieth where a man reco-
vereth against the Sureties in the Countrey, and the Sheriff
distrains them to pay the debt, where the Principal is suf-
ficient: But if he sue the Sureties in the Common Pleas,
where the Principal is sufficient to pay the debt, &c. Now
whether the Sureties may plead that, and aver that the
principal Debtor is sufficient to pay it; Or whether they
shall have a writ to the Sheriff not to distrain them, if the
Principal be sufficient. *Quære* of those cases. And the pro-
cess in the Writ is Summons, Attachment and Distrels.

Writ of Detinue.

if a man
bail a thing
to bail to
I. S. he shall
have *Detin-*
by Prisoner, yet
he hath no
property till
agreement,
39 H. 6. 44.
Laicon.
contr.
7 H. 4. 13.
Detinue was

A Writ of *Detinue* lieth, in Case, where a man delive- **A**
reth Goods or Chattels unto another to keep, and
afterwards he will not deliver them back again; Then he
shall have an action of *Detinue* of those Goods and Chat-
tels; and so if a man deliver Goods or mony put up in
Bags, or in a Chest, or in a Cupboard, to deliver unto ano-
ther, and he will not deliver the Goods or the mony in the
Bags; he to whom they should be delivered shall have a
Writ of *Detinue* for those Goods, &c. But if a man deliver
mony not in any Bag or Chest, to redeliver back, or to de-
liver over unto a stranger; now he to whom the mony shall
be delivered, shall not have an action of *Detinue* for the
mony, but a Writ of Account; because *Detinue* ought to
be of a thing which is certain; as of mony in Bags, or of a
Horse, or of a hundred Cows, or such certain things. And **B**
this Writ may be *vicontiel*, and shall be sued before the
Sheriff in the Countrey if the Plaintiff please; or he may
sue it in the Common Pleas, and the form of the Writ in
the Common Pleas is:

brought of a Bag with 20 l. and by *Martin*, 4 H. 6. 1, & 2. If a man bail 20 l. to
rebail *Detinue* lieth, and accompt. Contr. if it were *per accompt. rendr.* 6 E. 4. 11.
Detinue of four quarters of Barley, and doth not say in Sacks; and yet good.

*Rex Vic. &c. Prac. A. &c. qd. &c. redd. B. unam chartam
quam ei injuste detinet, ut dicit, & nisi, &c. Vel sic, quod
redd. B. unam pixidem cum tribus scriptis obligat. in eadem
pixide contentis sub sigillo predicti. B. consignat.* And the rule
in the Register is, *quod in brevi de Chartis reddendis semper
debet*

debet poni cert. numerus Chartar' vel scriptor'. And a man may have a writ of Detinue of one writing, and the Writ shall be, *Præc. A. qd. &c. redd. B. quoddam scriptum, per quod B. omnia bona & catall' sua in manerio de N. nuper exist. I. de L. dedit & concessit, qd. ei injuste, &c.* And the form of the Writ in the Count is such: *Rex Vic', &c. Præc. tibi, quod justities A. quod juste, &c. redd. B. unam Chartam, vel tres Chartas, vel unum scriptum obl. vel conventionale, vel acquietan. vel testam. vel chirographam, quod, quas vel quæ ei injuste detinet, ut dicit, sicut rationabilis. monstrare poterit, quod ei ea redd. debeat, ne amplius, &c.*

Note, that 17
21 H. 6. 29.
the Writ
was *Reddat
bona & ca-
talla*; and
declares of
three deeds,
contr. if of
3 obligati-
ons. 29 E. 3.
Detinue 49.
The Writ
was *Unam
Chartam*,
And the
Count of a
confirmati-
on.

- C And if a man sue in any Court a plaint of Detinue for any Charters which touch and concern Freehold, if it be not in the Common Pleas by the King's Writ, the Defendant may sue a Prohibition; to prohibit them &c. and to surcease, &c.

Rex ball. I. de R. Sal. Cum pl. ita de detentione chartarum seu scriptorum liberum tenementum tangen in aliquibus cur. quæ record. non habent, secundum legem & consuetud. Regni nostri sine brevi nostro placitari non debeant, ac W. B. de eo quod idem B. redd. præfat. W. tres Chartas coram vobis in cur. prædict. Dom. vestri de R. sine brevi nostro implacitet, ut accepimus, vobis præcipimus, quod si ita est, tunc placito illo coram vobis in curia prædict. sine brevi nostr. ulterius tenend. supersedeatis omnino, & præf. W. dicatis ex parte nostra, qd. breve nostrum de detentio- ne chartarum prædict. versus præf. B. sibi impetret, si sibi viderit expedire. Teste, &c.

- D And the Plea may be removed by Pone out of the Coun- ty at the Plaintiff's suit, without cause sued in the Writ; and at the suit of the Defendant he ought to shew cause in the Pone: and this clause shall be in the end of the Writ. *Fiat executio istius brevis, si causa sit vera, aliter non, &c.*

- E And if a man find my goods which I have lost, I shall have a writ of Detinue of them.

38 H. 6. 24.
25. Litt.

- F And if a man giveth Lands in tail by deed indented, and the Donee dieth without heir, the Donor shall have a writ of Detinue for that part of the deed indented which the Do- nee had.

And so if lands be given to two men and the heirs of one of them; If the Tenant for life dieth, he who hath the Fee shall have a writ of Detinue for that deed.

7 E. 4. 20.
Mortie.
18 E. 4. 14.
the Feoffee
shall not
have this
Writ against
a stranger.

- G If a man make a Feoffment in Fee of his Land by deed, yet the Feoffee shall not have the Charters concerning the Land, but the Feoffor shall keep them, if he do not give them to the Feoffee; but against a stranger the Feoffee shall have an Action of Detinue for those Charters which

H.7.10.

concern the Lands, if he cannot make title by the Feoffor, or those who claim title by the Feoffor.

And the heir in tail shall have a Writ of *Detinue* against the Discontinuee for the deed of entail by which the land was given.

9 H.6.38.

The heir ought to make Title to the Land otherwise the Executors shall have them.

19 H.6.41. acc.

9 E.4.52.

And if a man maketh a Feofment in Fee of the Land which is Feesimple, his heir shall have the Charters which concern the same Lands, and not the Executors of the father.

If a man make a Lease for years and afterwards confirms his Estate in Fee, the heir of the Feoffee shall have the deed of the Lessor for years, as well as the deed of confirmation, because that the deed doth make the confirmation good: And so of every deed which maketh his title, or a release, or the like, without which his title shall not be sure, and he shall have an Action of *Detinue* for them.

9 H.6.15.

10 E.4.9.

29 E.3. Br.

Chart 38.

10 E.4.9.

10 E.4.14.

The Lord by Escheat shall have *Detinue* for Charters.

And the heir shall have a *Detinue* of Charters, although he hath not the Land; As if I be enfeoffed with warranty, and I enfeoff another with a warranty in fee, my heir shall have a *Detinue* of that deed by which I am enfeoffed, because he may have advantage of the warranty.

And if my Father be disseised, and dieth, I shall have a *Detinue* for the Charters, although I have not the Land, and the Executors shall not have the Action for them.

And if a man have goods delivered to him to deliver over to another, and afterwards a Writ of *Detinue* is brought against him by him who hath right unto the goods; Now if the defendant depending the Action deliver the goods over to whom they were bailed to him for to deliver, the same is a good bar in the Action, because he hath delivered them according to the bailment made unto him.

For *Detinue* 61.

13 H.3. Prohibition 21.

Scit. 44. c.

And after divorce made betwixt the husband and the wife, the wife shall have a Writ of *Detinue* for the goods given with her in *Frankmarriage*, which see M.34 E.1. And the process in *Detinue* is Summons, Attachment and Distress.

Writ de Recto de Custodia terra & heredis.

THE Writ de *Custodia Terra & Heredis* lieth where the Tenant holden of his Lord by Knights service, and dieth in his homage, and a stranger entrencheth into the Land, and taketh the body of the heir; The Lord of whom he holdeth the land shall have a Writ of *Custodia Terra & heredis*; and the Writ is such:

Rex

Rex Vic, &c. Prac. A. quod, &c. redd. B. custod. terr. & hered. C. quam ad ipsum B. pertinet, eo qd. prad. C. terr. suam de eo tenuit per servitium militare, ut dicit, &c. & nisi, &c.

C *Aliter de hered. terr. Prac. A. qd. &c. redd. B. & uxorem ejus W. filium & hered. E. cujus custodia ad ipsos B. & C. pertinet, eo qd. pd. E. terram suam de prad. C. &c. Vel sic : de L. patre pd. C. cujus heres ipse est & tenuit per servitium militare, ut dicit, &c. & nisi, &c.*

And a Writ of the Lands only is such : *Prac. A. qd. &c. redd. B. custod. unius virgat. terr. cum pertin. in R. qua ad ipsum pertinet, eo quod C. terram illam de eo tenuit per servitium militare, ut dicit, &c. Vel sic : ratione dimission. qd. ad ipsum B. pertin. quam A. de quo pradict. C. terram illam tenuit per serviq. militare, inde fecit eid. B. ut dicit, &c.*

D And if a man have a wardship by reason of a Ward, and is taken from him, the Writ shall be thus : *Quod reddat B. J. filium & hered. C. cujus custodia ad ipsum pertinet ratione custod. terr. & hered. R. de quo pradict. C. terram illam tenuit per servic. militare, inde fecit eid. B. ut dicit, &c.*

And if the Lord Paramount will shew a Writ of right of ward for the Services and Rent, and the heir of the Mesn, he may have a general Writ of the land and heir, if he will, or a special writ thus :

Pracipe A. qd. &c. reddat B. custodiam decem solid. redditus, & hered. C. qua ad ipsum pertinet, eo quod pradict. C. tenementum unde redditus ille provenit, de eo tenuit per servitium militare, ut dicit.

F And this Writ may be sued in the County before the Sheriff by a Justices, and then the Writ is such :

Pracipimus tibi, qd. justicies A. quod reddat B. custodiam terr. & hered. C. qua, &c. ut dicit, sicut rationabiliter, &c.

G And the Plaintiff may remove the same by a Pone without cause shewed, and the Defendant ought for to shew
H cause in the Pone, as he shall do in a Replevin.

And it appeareth by the Register, That the Guardian in Socage shall have the Writ of Right of ward of the heir alone, or of the Land alone, or of both ; for the heir thus

Rex, &c. Prac. A. quod, &c. redd. B. W. filio & hered. C. cujus custod. ad ipsum B. pertinet, eo quod pradict. C. terram suam tenuit in socagio, & pradict. B. propinquior est heredi ipsius C. ut dicit.

And there is the like Writ for the Land. And the reason and cause that he shall have this Writ seemeth to be, because that for the Land he cannot have other remedy, if he cannot enter into the Land : and yet I conceive that

Writ of Right of Ward.

Guardian in Socage shall have a Writ of Right of Ward for the Land, because he is accountable unto the heir for the same, which proves he hath no right unto the Land, but as Bailiff.

And the Guardian in Socage shall have a Writ of ward for cause of wardship, where his Guardian ought to have another Infant in ward, because he is next of blood unto him to whom the Inheritance cannot descend; and the writ is such :

Rex, &c. Prac. A. quod, &c. red. B. custodiam terr. & hered. C. quod ad ipsum B. pertinet ratione custodia J. filia & hered. D. qui terram suam tenuit in socagio, in manu ipsius B. existen. eo quod præd. B. terram suam tenuit in socagio, & prædict. B. propinquior est heredi ipsius J. ut dicit, Et nisi, &c.

And it seemeth, That a writ of Right, *De communi custodia*,^I was at the Common Law, and as well for Guardian in Socage for the body of the heir, as for Guardian in Knights service. But the Writ of Ravishment of ward was not at the Common Law for the Guardian in Knights service, but the same was given by the Statute of *Westm. 2. cap. 35.* And by the Equity of that Statute Guardian in Socage shall have a Writ of Ravishment of ward as well as Guardian by Knights service; and by the same reason he shall have a Writ of Right of ward at the Common Law, as Guardian in Socage shall have.

And if the Mefn hath two daughters, one within age, ^K and the other of full age, and dieth; and the Lord hath the wardship of her within age, and afterwards the Tenant dieth, his heir within age, now the Lord Paramount, and the Sister of full age who is one of the Mefns, shall have a Writ of Right of ward in this form :

Prac. A. &c. quod, &c. reddas B. uni filiar. & heredum W. & P. de E custodiam terræ & hered. R. quod ad ipsos B. & P. pertinet, eo quod præd. R. terram suam de præf. B. & M. soror. ejusdem B. altera fil. & hered. ejusdem W. infra ætatem, & in custodia prædict. P. existen. tenuit per servitium militare, ut dicunt, & nisi, &c.

And it appeareth in the Register, That the Writ *De E. L. jectiōe Custodiæ* lieth for the Land, and for the heir together, for the Writ is such :

^{11 H. 4. 64.}

65. If the

Ejectment

of Ward be brought of Land only, the party must shew the Certainty of the Land; But if it be of the Body and Land, the Writ general, *de terris & hered.* is good

^{22 Eliz. Dy. 299.} It lieth not but of Land only.

Rex

Rex Vic', &c. Si A. fecerit, &c. tunc sum, &c. B. ostensur.
quare cum custodia terræ & hered. C. usque ad legitim. etatem If he who e-
her. præd. ad ipsum A. pertineat, eo quod idem C. terram suam jects aliens
de eo tenuit per servitium militare, ac idem A. in plena & paci- to another,
fica seifina ejusdem custodiæ diu extiterat, prædict. B. prædict. yet he may
hered. infra etatem existen. ipsum A. a custodia illa violent. have this
ejecit, ut dicit, & habeas ibi sum. & hoc bereve, &c. writ against
 him who e-
 jected him;
 and yet the party shall recover Land to his Writ. 12 H. 4. 10. by *Hankford*; so
 if one eject the Ejector, he who was first ejected shall not have this Writ no
 more than one shall have Trespass, &c. against the second Trespassor, 39 Ass. 2.

A Another Writ for the Land only, where he hath the same by grant of the Guardian, thus :

Rex Vic', &c. Si A. fecerit, &c. tunc sum, &c. quare cum
custodia unius virgat. terræ cum pertin. in D. usque ad legiti-
mam etatem J. fil. & hered. C. ad ipsum A. pertineat, ratione
dimissionis quam R. de quo prædict. C. terram suam tenuit per
servit. militare inde fecit eidem A. ut dicitur, ac idem A. in
plena & pacifica seifina ejusdem custod. diu extiterit, idem B.
hered. prædict. infra etat. existen. præd. A. a custod. præd. vio-
lenter ejecit, ut dicit, &c.

B Another writ when a man hath a Ward of the King's grant, and he granteth the same over unto another, Then thus, as above :

Ratione d:missionis, quam C. qui custod. illam habuit ex
commission. Dom. Ed. nuper Regis Angliæ, prædecess. nostri, de
quo præd R. terram suam tenuit per servitium militare, inde
fecit eidem B. &c. ac idem, &c. Or thus, Si B. fecer. &c. tunc
sum. B. respondend. tam nobis quam præfat. G. quare cum nos
commiserimus præf. E. custod. terr. & tenement. quæ fuer. J. de
C. defuncti, qui de nobis tenuit in capite, & quæ ratione minoris
etat. P. consang. & hered. prædict. J. in manum nostram extite-
runt, habend. cum omnibus ad custod. ill. spectantibus usque ad
legit. etat. hered. prædict. & idem E. in plena & pacifica
seifina ejusdem B. custod. prætext. commiss. nostr. præd. diu ex-
stitisset, idem B. hered. præd. infra etat. existen. præd. A. a cu-
stod. cent. solid. redditus cum pertin. in H. inde violententer ejecit,
ut dicit, &c.

C

And Guardian in Socage shall have a Writ *De Ejectione Custod'*, as appeareth by the Register; and by the like reason, as well as he shall have a Writ of Reavishment of Ward for the body, he shall have a Writ of Ejectionment of Ward for the Land.

13 H. 4. 17.

Writ of Right of Ward.

And if a man have the Patronage of an Abby or Priory, D and hath right to have the Temporalities during the time of vacation of them, if he have the possession thereof, and be ousted, he shall have have a Writ *De Ejectione Custodie*; and the Writ shall be such :

Ostensur. quare cum custod. priorat. de B. ad ipsum A. in vacationibus ejusdem prioratus pertineat; ac idem A. in plena & pacifica seissina ejusdem custodie in ultim. vacatione ejusdem custod. in ultima vacatione prioratus predicti. diu extiterit, pred. B. pref. A. a custodia illa violenter ejecit, &c.

And by the Register it is said. That the Writ of Right may be sued *De Custodia Priorat'*, in time of vacation, &c. thus :

Rex, &c. Pref', &c. quod, &c. redd. B. custodiam Prioratus de N. &c.

And that is grounded upon the Statute of *Magna Charta* cap. 6. *Quod omnes Patroni Abbatiarum, &c.*

And there is another Writ of Ward for the body, which is called a *Writ of Ravishment of Ward*: and that Writ lieth as well for Guardian in Socage as for Guardian in Knights service.

And if a man have one in ward because his Ancestor E held of him by Knights service, and the Ward is ravished and taken from him; he shall have that writ of Ravishment of Ward.

And so shall the Grantee of the Ward, or his Executors F if he be taken from them; and the form of the Writ for the Lord of whom the Ancestor of the Ward held, is such :

Rex Vic', &c. salut. Si A. fecerit, &c. tunc pone, &c. B. quod sit coram Justiciariis nostris, vel coram nobis tali die, ubicunque, &c. ostensur. quare J. fil & hered. C. infra etatem existent. cujus maritadium ad ipsum A. pertinet, apud N. inventum rapuit & abduxit, contra voluntatem ipsius A. & contra pacem nostram, & interim diligenter inquiras, ubi heres ille sit in balliva tua, & ipsum, ubicunque fuerit inventus, cap. & salvo & secur. custod. ita quod eum habens coram pref. Justic. nostris. Or thus, Coram nobis, &c. ad pref. terminum ad redd. cui pred. A. & B. reddi debeat, & habeas, &c.

And if the heir be ravished and carried from County to County, then the Writ shall be thus :

Rex Vic', &c. Quest. est nobis A. predicti. B. C. fil. & hered. infra etat. existent. & in custodia sua existent. apud E. in Com. Linc rapuit, & de Com. illo usque I. in Com. tuo abduxit, contra volunt. ipsius A. & contra pacem nostram; & idem tibi precipimus,

mus, quod prædict. hered. ubicunque in balliva tua inven. poteris, capias & salvo & secur. custodias, ita quod eum habeas coram Justic. nostris apud, &c. tali die, quem diem idem A. habet vers. præfat. B. ad redd. cui de jure reddi debeat, & habeas, &c.

G And the form of the Writ for the Guardian in Socage is thus :

Rex, &c. Si A. fecerit, &c. tunc pone, &c. B. &c. quare cum custodia terr. & hered. C. usque ad legitimam etatem ipsius heredis ad ipsam A. pertineat, eo quod prædict. C. terram suam tenuit in socagio, & prædict. A. propinquior est heredi ipsius C. ac idem A. in plena, &c. diu extiterit, prædict. W. B. filium & heredem prædict. C. infra etatem, & in custodia ipsius A. exist. apud N. invent. vi & armis cepis, & abduxit, & alia enormia ci intulit, ad grave damnum ipsius A. & contra pacem nostram. Et habeas ibi nomina pleg. & hoc breve. Teste, &c. Vel sic : Vi & armis rapuit, & ipsum sine licencia & voluntate ipsius A. maritavit ad grave damnum, &c.

[141]

A And if the Infant be in the custody of the Lord, and during his nonage he enter upon the Lord, and oust him of the land which he ought to have in Ward, Then the Lord shall have a Writ of Intrusion of ward against him, and the Writ shall be such :

C Rex Vic, &c. Si A. fecerit, &c. tunc sum. &c. I filium & hered. C. ostens. quare cum custod. ad ipsum A. usque ad legitimam etatem heredis prædict. pertineat ratione dimissionis, quam L. de quo prædict. C. terram suam tenuit per servitium militare inde fecit præfat. A. & que A. in plena & pacifica seissina, &c. extiterit, prædict. I. infra etatem existens, se in terram prædict. intrusit, & custodiam illam præfat. A. detinet, ad damnum ipsius A. non modicum & gravamen, &c. ut dicit, &c. Et habeas, &c. Vel sic : ostens. quare custodia manerii de T. cum pertin. usque ad legitimam etatem prædicti I. ad ipsum A. pertinuisset ratione dimissionis, quam B. cui H. de quo & Alice uxor ei præd. C. Manerium illud tenuit per servitium militare, illud dimisit, inde fecit præf. A. &c. ac idem A. in plena, &c. præd. I. dum infra etatem fuit, se in manerium prædictum intrusit, & custod. illam præfat. A. hucusque detinuit, ad damnum, ut dicit, & habeas, &c.

D And the Writ lieth where the Tenant holdeth of a man and his wife by Knights service in the right of the wife, and the Tenant dieth, his heir within age, and the husband granteth the wardship of the land unto another who granteth it over unto another, upon whom the heir intrudeth &c.

And

2 H 7.9.
31 Aff. 26.
Br. Affise,
321.

And if the Lord have the custody of the Heir within age D and tender him a convenient marriage, and he refuseth it and intrudeth, Then the Lord shall have a Writ against him for to recover the value of the marriage, and also to recover the Land, which shall be such :

Vid. 8 Ilz.
Dyer 255.
the tender
traversed.

Rex Vic', &c. Si A. fecerit, &c. tunc summ. &c. B. &c. ostens quare cum maritagium prædict. B. ad ipsum A. pertineat, eo quod prædict. B. terram suam de eo tenuit per servitium militare, & idem A. prædict. B. dum fuit infra ætatem in custodia sua competens maritagium absque disparagatione, juxta formam statuti de communi consilio regni nostri inde provisi, sapius obtulerit, idem B. maritagium illud renuens præf. A. de maritagio suo contradicit, &c. ad grave damnum, &c.

And it appeareth by the writs abovesaid, That the Guardian shall have a Writ of Intrusion of Ward against the heir as well at his full age, as during his nonage.

There is another Writ *De valore maritagi* for the Lord F or for his Executors against the heir, without speaking of any intrusion made by the heir into the land. And the writ is such :

Rex Vic', &c. Si A. &c. fecerit, &c. tunc summ, &c. quare cum maritagium ipsius L. &c. (usque ibi) obtulerit, præf. L. maritagium illud renunciaret de eodem maritagio præf. A. cum jam ad plenam ætatem pervenerit satisfacere recusavit, & adhuc recusat minus juste, ad damnum, &c. Et contra formam statuti.

And if the heir be in the Lord's custody, and doth marry H himself within age, without the assent of the Lord, and when he cometh of full age, he entreth upon the Lord, and puts him out of the land, Then the Lord shall have a Writ of forfeiture of marriage against him, for the double value of the marriage. And the Writ shall be such :

Si A. fecerit, &c. tunc summ. C. fil. & hered. D. quod sit G coram Justiciariis, &c. ostens. quare cum maritagium ipsius C. una cum custodia unius acr. terr. cum pertin. in N. ad ipsum A. pertin. ratione dimission. quam L. quod custodiam illam habuit ex dimissione F. cui G. eam dimisit, de quo prædict. D. terram suam tenuit per servitium militare, inde fecit præf. A. & idem A. præf. C. dum fuit infra ætatem & in custodia sua competens maritagium absque disparagatione juxta formam statuti de communi consilio regni nostri inde provisi sapius obtulerit, idem C. maritagium illud renuens, se sine licentia & voluntate ipsius A. maritar fecit, & se in terris prædictis (præf. A. pro maritagio prædicto non satisfacto) intrusit, & de maritagio prædicto eidem A. satisfacere contradicit, ad grave damnum ipsius

ipſius A. contra formam ſtatuti prædicti. ut dicit, & habeas, &c. ſumm. &c. Teſte, &c.

I And that writ lieth where the Lord granteth the Wardſhip of the heir and land of his Tenant unto F. who granteth the ſame heir and land unto L. who granteth the ſame over unto the ſaid A. the now Plaintiff, who tendereth marriage unto C. and he refuseth the ſame, and marrieth himſelf during his nonage, and at his full age entreth into the the Marriage not ſatisfied, &c.

K And otherwiſe for the Lord againſt the Tenant himſelf, thus :

Si A. fecerit, &c. ſumm', &c. B. fil. & hered. C. quod ſit coram Juſticiar. &c. oſtenſ. quare cum maritagium prædictum B. ad ipſum A. pertineat, eo quod prædict. C. terram ſuam de eo tenuit per ſervitium militare, & idem A. competens maritagium abſque diſparagatione, &c. & prædict. B. dum infra ætatem fuit, frequent. obtulerit, idem B. maritagium illud admittere reſuſavit, & ſine licentia & voluntate præſ. A. ſe maritavit, &c. ad grave damnum, &c.

L And the Lord may have ſuch Writ of Forfeiture of marriage againſt the heir of the Meſn, if he marry during his nonage, and enter into the Meſnalty, or take the Rent and Services of the Tenant paravail, and the Writ ſhall be general, as if he were Tenant paravail, &c. not making mention of the Meſnalty. [142]

A If a man be Tenant in tail, the reverſion to the King, and the King doth liſenſe him to alien in Fee, and to take back an Eſtate unto himſelf and his wife in tail, the remainder to his right heir, and he maketh ſuch Feoffment, and taketh back an Eſtate unto himſelf and his wife in tail, the remainder to his right heirs, and dieth, his heir within age ; The King, notwithstanding his Licenſe, ſhall have the wardſhip during the life of the wife, for that the Licenſe doth not give him power to alien the King's Reverſion, &c. And when the Reverſion cannot be diſcontinued, the Eſtate tail cannot be diſcontinued, but by his death the heir may enter into the Land, and ſo the King may in his Right.

B If a man have Lands for life, the remainder in Fee unto another, and he in the remainder dieth, his heir within age, he ſhall not be in Ward during the life of the Tenant for life ; becauſe that during his life, the Tenant for life is Tenant to the Lord Paramount, although the Land be holden by Knights ſervice. And the Guardian ſhall put out the Termor who holdeth for years of the Leaſe of his Tenant
And

v. Dyer 8.
& 12. & 132
b. C. 2. part
92.

And the Statute of *Marelebridge* in a manner proveth ha^C may so do. And there are many old books to prove the same by Judgments that are given; and it seemeth reasonable that it should be so, by the ancient Title which the Lord hath, when he reserved such Services upon his Feofment, to have the wardship if he dieth, the heir being within age.

^{C. 3. part 35} And if the Tenant be disseised and dieth, his heir being ^D within age, the Lord shall seise the Ward, and enter into the land upon the disseisor in the right of the heir.

^{41 E. 3. 18.} But if the Tenant doth enfeoff his Son during his non- ^E age, who doth homage unto the Lord, and afterwards the Tenant dieth, the heir within age, the Lord shall not have the wardship of him, because he hath accepted of him for his Tenant in the life of the Father. But it appeareth by *Magna Charta*, That the Lord shall take homage of the heir before he have the wardship of him, but that is after the death of the Ancestor, and not in the life of the Ancestor, and so was the Law taken in Old Books.

^{33 H. 6. 16.} If a man purchase Lands by feofment which are holden ^F severally of divers lords by Knights service, and afterwards dieth, his heir within age, That Lord who first getteth the Ward shall have him, because there is no priority; But if he purchase lands which are holden by Knights service of one Lord, and afterwards purchase lands by Knight service of another Lord, and dieth, his heir within age, that Lord shall have the wardship of the heir of whom the land first purchased was holden, for he holdeth of him by the more ancient feofment and priority, than he holdeth of the other Lord.

^{14 Aff. Br.} And if a man hold of the King by posteriority; and holdeth lands of another Lord by priority, and afterwards dieth, his heir within age, the King shall have the wardship of his body by his Prerogative, not having regard to the priority or Posteriority.

³⁶ ^{C. 5. part 2} And if a man hold of the King by posteriority, and of another Lord by priority, and afterwards the King granteth the Seigniorie unto the Queen for life, and afterwards the Tenant dieth, his heir within age, The Queen shall have the wardship of the body, not having regard unto the posteriority, because that the Reversion of the Seigniorie doth remain in the King.

^{18 E. 3. 13.} But if the King hath granted the remainder of the Seigniorie in Fee unto a stranger, Then it seemeth the Queen shall not have the Wardship of the body, for the Seigniorie of

^{Quare, If} Plenary be a good plea against the Queen; where the reversion is in the King
^{18 E. 3. 13.} Stanford, Prerogative 13.

^{Good bar In} Forfeiture of Marriage. In 7 E. 2. Accon. sur. Statute 31.

^{So of Land} in use, 21 H. 8. B. prerogative 92.

^{33 H. 6. 16.} Prisot.

^{14 Aff. Br.} Affize 192. Com. 133. 36 E. 3. Gard. 11. 31 E. 1. Gard. 155. Br. Fealty.

of posteriority, &c. and priority is changed by the Feoffment of the Tenant of the land. And if he make a Feoffment in Fee of the land which he holdeth by priority, and takes back an estate again of the same, Now he holdeth the same land of that Lord by posteriority, whereas he held it before of him by priority. But if the Lord of whom the Tenant holdeth by Priority, grant his Seigniorie unto another in Fee, and take back again an estate in the Seigniorie to him in Fee, &c. yet the Tenant holdeth of him by priority as he held before, because the pleading of Priority is to say, That he holdeth of such a man and his Ancestors, or of those whose estate he hath in the Seigniorie, *per antiquius feofamentum*, &c. than he holdeth the other Land, so that the Feoffment of the land doth make the priority. And if the Tenant do forejudge the Mesne, of whom he holdeth by Priority, &c. Yet he shall hold by Priority of the Lord Paramount, as he held of the Mesne before, &c.

If he make a Feoffment & this done to his use. *Quare* if the Priority be gone. 2 E. 2. Fitz. Gard. 2. acc.

G The Mayor and Aldermen, and Chamberlains by the Custom of *London* shall have the custody of any Orphan in the City, and if they commit the Custody of such Orphan to another, He shall have a Writ of Ravishment of ward against him who taketh the Ward out of his possession.

H And if the Guardian marry the heir after the age of 14 years, and afterwards the heir is taken by a stranger, the Guardian shall not have a writ of Ravishment, &c. because he hath had the effect of his marriage.

I If a man have a Ward in the Right of his wife, although the wife dieth, yet the husband shall have the Ward, because it is a Chattel vested in him.

Tenant in tail grants his estate of Mannor

unto which an advowson is appendant the Church void, Tenant in tail dieth, the Grantee shall have the Advowson. So if the Church void during the Term, and the Term expire, 9 E. 3. *Quare Impedit* 18.

K Where the Tenant maketh a Feoffment by Collusion, and the Lord accepteth the Services of the Feoffee, then he shall not have the Wardship of the Tenants heir, nor shall oversee the Collusion.

And if a man at this day maketh a Feoffment in fee to his use, and the Lord accept the Services of the Feoffee: yet if the Feoffor who hath the use dieth, his heir within age, the Lord shall have the Wardship of his heir by the Statute of 4 H. 7. cap. 17.

[143]
But the Grantee que use of a Seigniorie shall not have Guard

for the Feoffee before 27 H. 8. were Lord.

And

And if a man lease Lands for term of life, the remainder A to the Husband and Wife in tail, the remainder in fee to the heirs of the Husband, and the Husband and Wife die, his heir within age being Tenant for life, his heir shall not be in ward.

27 H. 8. 26.
Fitz. herbert
contra.
Vid. 34 & 35
H. 8.
Dyer 54.
4 H. 6. 19.

If the King's Tenant giveth Lands in tail without the B King's Licence, and the King accepteth the ancient Tenant for his Tenant, and the Services, and afterwards the Donee in tail dieth, his heir within age, the King shall have the Wardship of him, as seemeth by the Statute of 34 E. 3. Vid. 34 & 35 cap. 15. And this acceptance of the Services shall not conclude the King; for the King shall not be concluded, &c. if he have matter to shew which may serve him. And yet in Anno 4 H. 6. it is adjudged contrary; and therefore *Quere* the Law in that case.

And the lands of the wife within age shall be in Ward, C although her husband be of full age.

And if a woman be past the age of fourteen years at the time of the death of her ancestor, she shall not be in Ward.

A Committee of the King shall not have a ward by D reason of the Ward, but the King shall have the same, because the King remaineth Guardian, &c. and the heir shall sue Livery.

2 H. 4. 19 ac.
40 E. 3. 14.
contra.
10 Ellz.
Dyer 277.
the Executors
of the
predecessor
shall have
the Ward.

If a Bishop have Title to have a ward, and doth not seise E him in his life time, and dieth, the Successor shall have that Ward, and shall seise him, &c. Otherwise it seemeth if the Bishop had seised him.

If the heir female be married by the Lord before her F age of fourteen years, and afterwards the husband dieth, the heir female shall not be married again by the Lw, &c. And by the same reason he shall not have a Writ of Ravishment of Ward, if another man do ravish her afterwards.

If the Grandfather have a Son, and the Son taketh a wife, G and have issue, and dieth, the Mother of the issue shall have the Wardship of the Child which is her own Child, and not the Grandfather, although the issue may have the land which ought to descend to him by the Grandfather, and although that the Mother shall not have the land Hill. 31. C. 6. part 22. E. 3.

11 H. 7. 12.
contra.
7 H. 4. 12 ac.

If an Infant recover land by a Writ of *Dum non fuit compos mentis*, he shall not be in Ward; and so it seemeth if he do recover by a Formedon or other Action Ancestrel, where he could not enter, because his Ancestor did not

not die Tenant to the Lord, &c. nor in his Homage.*

I And a man may seise his Ward, although he be Appren-
tice or in service of another.

K But if the Tenant maketh a Feofment by Collusion, The
Lord ought to recover the Land by a Writ of Right of
Ward, before he shall have a Writ for the Ravishment of
the Ward, &c.

L If a man be Tenant be the Courtesie of a Seigniorie, the
heir shall not be in Ward during the life of the Tenant by
the Courtesie, &c.

But if a man have issue a son, and afterwards he taketh a
wife who hath lands holden by Knights service, and hath
issue by her, and afterwards the wife dieth, if the Husband
be not Tenant by the Courtesie of the land, then the Hus-
band's younger son shall be in Ward during the life of his
father, &c.

M If an infant be married in the life of his father within
the age of consent, and afterwards the father dieth, the
infant being within the age of consent; The Lord shall
have a Writ of Ravishment of ward for the infant, be-
cause he may perhaps disagree unto the marriage.

30 E. 1. Gar.
156 ac. but
shall not
have Forfel-
ture upon
tender and
refusal

N And the Lord of the Villain shall have the wardship of
the land and the body of the heir of a Villain, if he seise
him before the Lord, &c. otherwise not of the land.

7 H. 6. 12.
In case of
the King.
40 Af. 7.
Br. Vill. 31.

O If lands descend unto the wife, and afterwards the wife
hath issue by her Husband, and dieth before the Husband
entrench, so that he shall not be Tenant by the Courtesie;
The issue shall be in Ward if he be within age, and if he be
not heir apparent to the husband; and so if the Issue by
the wife were a woman, and within age, where the
Husband hath a son living, that issue within age shall be
in Ward, during the life of the Husband which is its fa-
ther.

And Pasch. 31 E. 3. The opinion was, That if the Hus-
band have not lands which shall from him descend to his
issue, That then his issue shall be in Ward for the Lands of
his wife, if he were within age, &c. in the life of the
husband: But it seemeth the Law is not now taken to be
so.

P Guardian in Socage did grant the wardship over to a
stranger, and the Grant awarded good. Hill. 26 E. 3. & Hil.
31 E. 3.

Q If an infant enter for a Condition broken upon a Feof-
ment made by his Ancestor, he shall be in Ward for that
Land, if it be holden by Knights service.

11 H. 7. 12.
12 H. 7. 20.
6 H. 4. 4.

And

Vid. 2 et 3.
Eliz. Dyer.
390.

And a man or a woman shall have a Writ, *Quare filium & hered. suum rapuit* : Or, *Quare filium & heredem rapuit*, Or, *Consanguineum & heredem suum rapuit*, &c. and that by the Common Law.

And the Process in a Writ of Ward appeareth by the Statute of Marlebridge, cap. 7. viz. Summons, Attachment, and Distress,

And in a Writ of Right of Ward, if he cometh not at the Distress, that the proclamation shall be awarded, that he shall have day by while two or three County Courts are holden in the mean time, before the return thereof; and if the Writ be returned, served, and he do not appear, he shall lose the Wardship, and the Plaintiff shall by Judgment recover the same.

Writ of Escheat.

THE Writ of Escheat lieth where the Tenant who hath an Estate in Fee-simple, of any Lands or Tenements, and holdeth them of another, and the Tenant dieth seised without Heir General or Special, The Lord shall have the writ of Escheat against him who is Tenant of the Lands or Tenements, after the death of his Tenant, and by this writ he shall recover the Land, because he shall have the same in lieu of his Services.

Founders-
hip shall not
Escheat nor
be forfeited,
because it is
tied to the
blood. Also
Rent charge
shall not Es-

cheat by death, contr. by attainder, 24 E. 3. 32. Br. Escheat. 9 H. 7. 37. 7 E. 4. 11. 120. If Abby or Parish Church be dissolved, the Lands which they held shall Escheat. 21 H. 7. 89. If a man holdeth two Acres by several Services of one Lord, he ought to have two Writs of Escheat.

But if Tenant in tail die without Heir, he in the Reversion shall not have a Writ of Escheat, but a Formedon in the Reverter.

[144]

Tenant in
tail of a
Sig. grants
the same,
cheats, Te-
nant in tail
dieth without issue,
he in the Reversion shall have Escheat of the Land, because he
is come in lieu of the Sig. See 40 E. 3. 4. 33 E. 3. Escheat 9. but by his opinion he
shall not have Escheat, because the Reversion was out of him at the death of the
Tenant.

But if a man be Tenant in tail of Land, the remainder to his right Heirs, and dieth without Heir, then the Lord of whom the Lands were holden in tail, shall have a Writ of Escheat, because the Tenant in tail was Tenant unto the Lord for the Fee-simple that he had in the Land, &c.

But if a man be Tenant for life, the remainder in Fee unto a stranger and his Heirs, and afterward the stranger dieth

dieth without heir, and afterward the Tenant for life dieth; the Lord shall not have a Writ of Escheat, because the Tenant for life was Tenant to the Lord, and not he in the remainder, &c. But there the Lord shall have a Writ of Intrusion if a stranger enter in the Land after the death of Tenant for life.

3 H. 2. Entr.
38.7 H. 4. 17.
contr. if the
disseisor die
or alien, for
these are
Tenants by
title.

C And if the Tenant be disseised, and afterwards dieth without heir, &c. it seemeth the Lord shall have a Writ of Escheat, because his Tenant died in the homage. And in that case he shall have a Writ of Right of ward, if the Tenant die, his heir being within age, and by the like reason he shall have a Writ of Escheat.

D If the Tenant dieth without heirs, and afterwards the Lord dieth; the heir of the Lord shall have a Writ of Escheat for to recover the Land, &c. for that Escheat made, and shall give a right unto the Lord to have the Land.

And this Writ shall descend from the Lord unto his heir, &c. and the forms of the Writs of Escheats are divers: One where the Tenant is a Bastard, and dieth without heir, and then the Writ is such:

46 E. 3. 4. the
Son brought
Escheat sup-
posing that
the Tenant
held of his

Father, whose heir he is, and exception taken, because it ought to be *qd. de eo tenet.*

E *Rex Vic', &c. Præc. A. &c. quod redd. B. 10. acr. terr. cum pertin. in N. quas C. de eo tenuit, & quæ ad ipsum B. reverti debent, tanquam escheata sua, eo quod præd. E. bastardus fuit, & obiit sine hered. ut dicit. &c.*

And if he be not a bastard, but dieth without heir, then the Writ is; *Et quæ ad ipsum B. reverti debeant tanquam escheata sua, eo quod præd. C. obiit sine hered. Vel sic: eo quod præd. C. feloniam fecit, pro qua suspensus fuit: vel pro qua utlagatus fuit: vel pro qua regnum abjuravit; & nisi, &c.* And the form of the Writs for the heir appear in the Register.

H And the King shall have a Writ of Escheat for lands in London, if the Tenant died seised of Lands there without heir, because the Lands in London are holden of the King; and this Writ he may sue in the King's Bench or in the Common Pleas.

And if a Man be beheaded for Felony, or die after Judgment, before that he be executed by the Officer; yet the Writ shall say, *Pro quo suspensus fuit, &c.* and it is not material whether that he be hanged or not.

Or if after
judgment he
be deliver'd
to the Bish.

cheat 10. contrary if he stand mute, 4 E. 4. 18. 22 H. 6. 38. Newton, if a man go beyond Sea without Licence, and taketh wife there, and hath issue and dieth, the Land shall escheat.

34 E. 3. Es-

48 E. 3. 34.
Where the
Tenant is
Utlage of
Felony, the
Lord hath
Election to
have a Writ
of Escheat;
supposi. g.
that the fe-
nant was
Utlage, or
that he died
without
heir.

And the course in the Register was, that if a man were attainted of Felony, that the King did send a Writ to the Sheriff to enquire what Lands and Tenements he had, and which he held of the King, and which of other Lands, and by what Service, and what they were worth by the year, *Ultra reprisas*, and that he certifie the same. But the same is altered by the Statute of 28 *Eliz. 3. cap. 9.* which is, That a Commission be made out unto the Sheriff to take the Indictment: and also there was another Writ appointed by the Register, directed unto the Sheriff to enquire whether such House or Land which *W.* had, who was attainted of Felony, were seised into the King's hand for a year and one day or not, and of whom they were holden, and who had the year, day and waste, and ought to answer the King for the same, and that he send the same before the King, &c. and now in place of these Writs, there ought to be a Commission granted to enquire thereof, directed to certain persons by the Statute aforesaid.

And if a man be attainted of Felony, and another entreth *K* into the Land, and taketh the profits, and if it be found by Commission that such a man, who was attainted of Felony, had such Lands and Tenements, and that the Lands and Tenements have been in the King's hand for one year and a day; and that *B.* hath taken the profits for that year and day, and also hath had the waste thereof; and that the Lands are holden of *F.* Then *F.* shall have a Writ unto the Sheriff, for to deliver him seisure of the Lands, &c. *Salvo jure cuiuslibet*, &c.

And he who hath taken the profits for the said year and day, shall answer the King for the same: and thereby it appeareth that the King shall not have but the next year and day, which cometh after the attainder, and that he who took the profits for that year, shall answer the King for the same.

And if Lands be holden of an Abbat, and the Tenant die *L* without heir, &c. the Successor shall have a Writ of Escheat, and the Writ shall suppose: *Ad ipsum nunc Abbatem reverti debet tanquam Escheata sua, eo quod præd' &c. obiit sine hered', &c. ut dic. Et nisi*, &c.

And the Tenant for life of the Seigniori shall have a *M* of Escheat, or Tenant in Dowry, or by the Courtesie, and also the Lord shall have a Writ of Escheat of the Mesnalty, which is but a Rent-service, and shall demand the Rent by the Writ.

And the King shall have a writ of Escheat of Tenements within

within Cities and Boroughs, which are holden of him in Fee-farm. 21 H. 7. 30.
But by the
Court, he
shall suppose
theland was
holden.
11 H. 4. 82.

And if a man have title to have a writ of Escheat, if he do not accept homage of the Tenant, he shall not afterwards have the Writ against him, because he hath accepted him his Tenant: and so if he accept Fealty of him. But if he do accept the Rent of the Tenant, that shall not bar him of his Writ of Escheat; and the Process are *Summons, Grand Cape and Petit Cape*, as in other *Præcipe quod reddat*. [145]

Writ of Covenant.

- A **W**Rits of Covenant are of divers natures: for some are mere personal: and some Covenants are real, to have a real thing, as Lands and Tenements: as a Covenant to levy a fine of Land is a real Covenant. But a Writ of Covenant which is more personal is, where a man by deed doth Covenant with another to build him a house, &c. or to serve him, or to enfeoff him, &c. and he doth not the same according to the Covenant, Then he with whom the Covenant was so made shall have a Writ of Covenant against him. And there is a Note in the Register, which is this: *A Writ of Covenant ought not to be made according to Law Merch. without a Deed, because no Plea of Covenant can be without Deed, and every man ought to be judged according to his Deed, and not by another Law: and the form of the Writ is such: Rex Vic', &c. Prac. A. quod, &c. teneat B. convent', &c. de damn. & perdit. per infidelitatem & defectum W. fil. R. apprenticii præd. B. infra termin. sex annorum illat. eidem B. restituend'. Et nisi, &c.*
- B

- C And if a man make a Covenant by Deed to another and his heirs to enfeoff him and his heirs of the Manor of D. &c. Now if he will not do it, and he to whom the Covenant is made dieth, his heir shall have a Writ of Covenant upon that Deed; and also his Assign shall have a Writ of Covenant where the Covenant is made to him and his Assigns. 18 Eliz. Dy.
217. &c. An-
thony Cook's
Case.

- D And so Executors shall have a Writ of Covenant, of a Covenant made unto their Testators for a personal thing, and these Writs appear in the Register.

And it appeareth by the Register he may sue a plaint of Covenant in the County or in the Hundred Court, &c.

And that he shall have a *Recordare* to the Sheriff for to remove the same out of the County into the Common Pleas, as it shall be done in a *Replevin* sued there.

And if the plaint of Covenant be sued in the Hundred, or in other Court of other Lord, he shall have an *Accedas ad Curiam* directed unto the Sheriff to remove the plaint into the Common-Pleas.

And the Writ of Covenant for Executors is such: *Præc. F*
I. quod, &c. A.B. & C. executoribus testament. N. conventionem factam inter ipsum N. & W. de E. de ipso W. cum præd. N. more apprenticii per septem an. moratur. & eidem N. post termin. illum complet. per tantum tempus quantum idem W. infra dict. termin. se a servitio ejusdem N. elongaverit servitur. ad quam quidem conventionem adimplend. & manutenend. idem W. script. suo se oblig. Et nisi, &c. Et præd. execut. &c.

And if a man make such Covenant by word. Or to *G*
 build him a House, &c. and he doth do it ill; then the Party shall have an Action upon the Case for the ill doing of it.

If a man covenant by word to do such a thing for a certain sum of money, and receive the parcel of the money, and day is appointed for the payment of the rest. Now if he do not according to his Covenant, he shall have an Action on the Case against him for not doing of it, because it is a bargain betwixt them.

And a Writ of Covenant lieth against Executors for a *H*
Covenant broken of the Testator, and the Writ shall be:
Vi 48 E. 3. 2. Præcip. I. & R. executor. testament. E. quod, &c. teneant W.
10 H. 7. 18. & A. uxori ejus conventionem factam inter ipsum A. & præf. E.
32 H. 6. 31. de eo quod idem E. hered. vel executores sui reddant C. fil. & hered. I. cum idem C. ad plenam ætatem pervenerit, rationabil. compos. suum de omnib. terr. & tenement. quæ præd. I. tenuit in villa de N. in com. N. pervenient. quorum custod. idem E. habuit ex dimission. quam præf. A. cui custod. terrar. & hered. præd. pertinuit eo qd. prædict. I. terram suam tenuit in socagio, & eadem A. appropinquior fuit hered. ipsius I. inde fecit eidem E. &c. Et nisi, &c.

And if a man have Lands for a term of years, and cove- *I*
 nanterth to leave them in as good a plight as he found them, although that he pulleth down the Houses, the Lessor shall not have an Action of Covenant before the end of the term: for the Covenant hath relation thereunto, &c. But if he do waste in Wood, Covenant lieth: for he cannot repair it, *E. 1. Covenant 29.*

If a man make a Lease by deed poll, if the Lessor put *K*
 out the Lessee, he shall have a Writ of Covenant upon the deed poll. But if a stranger who hath no Right, put out the Lessee, he shall not have a Writ of Covenant against the Lessor.

26 H. 8. 3. ac.

Lessor, because he hath remedy by Action against the stranger. But if the stranger enter by Eigne title upon the Lessee, then he shall have an Action of Covenant against the Lessor, because he hath no other remedy.

- M** And in a Writ of Covenant brought by the Lessee against the Lessor, if the term be not expired, he shall recover the term again, if he have put him out. But if a stranger put him out by Eigne title, then he shall recover all in damages against the Lessor. And the second Lessee shall have a Writ of Covenant against the Lessor, if the Lease be made to him and his Assignees with Warranty.

38 E. 3. 24
Skipwith
and Knevyt,
he shall re-
cover da-
mages only.
24 E. 3. 24.
he shall re-
cover his
Term.
20 E. 3. Co-
venant 3.
Vi. 9 Eliz.
Dyer 257.
27 H.6. Co-
venant 11.
17 H.6. 10.
40 E. 3. 5.

And if a man lease Lands for life by deed, and afterwards putteth him out, the Lessee shall not have a Writ of Covenant against him, but an Affize. But if he grant by the deed, That if a stranger enter by Eigne title, that then he shall have a Writ of Covenant thereupon: now upon this special matter he shall have a Writ of Covenant, otherwise not, *Quod Vi. Trin. 26 H.6.*

- A** And in London a man shall have a Writ of Covenant without a deed for the Covenant broken.

- B** And a man shall have a Writ of Covenant against the Sureties who became Sureties, or gave security that a man should perform such Covenants, &c.

- C** And the Assignee of the Lessee shall maintain a Writ of Covenant against the Lessor, although there be not any Assignee mentioned in the deed of Covenant.

[146]
42 E. 3. 3.
Finchden. If
the Cove-
nant go
with Land,
the Assignee shall have Covenant without being named. As two Coparceners one Covenanteth to discharge the other party, the Alience shall have Covenant.
26 H.6. Co-
venant 9.
although it
bear date in
other Coun-
ty, yet the
Writ lieth
where the
Land is.

the Assignee shall have Covenant without being named. As two Coparceners one Covenanteth to discharge the other party, the Alience shall have Covenant.

- D** Also Administrators shall have a Writ of Covenant as well as Executors.

- E** And the Writ of Covenant ought to be brought where the Covenant was made. But if he bring it in another County, the Party shall not plead the same to abate the Writ, unless the deed bear date in another County, and so the title of Covenant in the Abridgments were at large for that matter.

Covenant to levy a Fine.

T Here is another manner of Covenant, which is more **F** in the realty. And that Writ properly lieth where a man by deed granteth to another to levy a Fine to him and his heirs of certain Lands and Tenements, he to whom the grant is made shall have a Writ of Covenant against him to levy a fine of that Land, &c. and the form of the Writ is such :

Rex Vic', &c. Pracip. A. &c. quod, &c. teneat B. convention. suam inter eos fact. de manerio de N. cum pertin. Velsic; de uno mesuagio & una acr. terr. pertin. in N. &c. & nisi, &c:

46 E. 3. 4.

47 E. 3. 3.

And the form of the Particulars in that Writ shall be used as the form is, as in a *Præcipe quod reddat* of Land, to put the Particulars in the said Writ.

And if he who ought to levy the fine, and make the Co- **G** nusance, cannot come for sickness or other reasonable cause into Court, then he may sue a Writ of *Dedimus Potestatem*, directed unto some Justice, that he go to him to take the Conusance, and to certifie the same to the Justices of the Common Pleas; and the Writ of Covenant ought to be sued before the *Dedimus Potestatem* be returned in the Common Pleas; and the *Dedimus Potestatem* ought to recite that the Writ of Covenant is depending in the Common Pleas before the Justices; and the Writ shall be such :

Rex dilecto & fideli suo, W. Rikhil salutem. Cum breve nostrum de convention. pendeat coram vobis & sociis vestr. Justic. nostris de banco inter A. & B. & C. uxor. ejus de una caruca terre cum pertin. in N. ad finem inde inter eos coram vobis & sociis vestris prædict. de banco præd. secundum legem & consuetudinem regni nostri levand. ac præf. A. B. & C. adeo impotentes sui existant, quod absque maximo suorum corporum periculo usque ad Westm. ad diem in brevi prædict. contentum ad recognitiones que in hac parte requiruntur faciend. laborare non sufficiunt, ut accepimus. Nos statui eorund. A. B. & C. compatiētes in hac parte, dedimus vobis potestatem recipiend. cognitiones quas præd. A. B. & C. coram vobis facere voluerunt in præmiss. & ideo vobis mandam. quod ad præf. A. B. & C. personaliter accedent. cognition. suas præd. recipiatis. Et cum eas receptis præfat. socios vestros inde distinet & aperte reddatis certiores, ut tunc finis ille inter partes prædict. de tenementis prædict. coram vobis & sociis vestris prædict. in eodem banco levare possit, secundum legem & consuetudinem prædict. & habeas ibi tunc hoc breve. Teste, &c.

And

And if the *Dedimus Potestatem* be made unto any the Justices of the King's Bench, then the form of the Writ is such :

Rex dilect' &c. W. capital. Justic. nostro. Vel sic ; Justic. nostro, &c. Cum custos domus vicarie Ecclesie beati Petri Ebor. tulerit brevis nostr. de convent. versus H. militem de advocacione Eccles. de F. ad finem inde inter eos coram Justic. nostris de banco secund. legem & consuetud. regni nostri levand. ac idem custos & H. adeo impotentes, &c. (usque ibi) & cum eas receperitis pref. Justic. nostros inde sub sigillo vestro distincte & aperte reddatis certiores, ut tunc finis ille, &c. (usque ibi) secundum legem & consuetudinem supradict. mittend. eisdem Justic. hoc breve. Teste, &c.

And if a Man have divers Writs of Covenant depending against several persons in several Counties, &c. he may have one Writ of *Dedimus Potestatem* directed to one Justice to take their Conufance severally, and to certifie them, &c. and the form of the Writ is such :

Rex, &c. Cum breve nostrum de conventionione pendeat coram vobis & sociis vestris Justic. nostris in banco inter E. & J. de medietate manerii de N. cum pertin. & aliud breve nostrum de conventionione pendeat coram vobis & sociis vestris pref. inter ipsum E. & pref. I. de uno mesuagio, &c. (& sic de aliis, &c.) ac fines inde inter eos, &c. (ubi supra.)

And if a Man ought for to levy a fine, and he is going in the King's Service, then he shall have a *Dedimus Potestatem* directed unto the Justices, to take his Conufance. And so of a Woman who is with Child; and the Writ shall mention the same: thus,

Rex, &c. Cum breve, &c. (usque ibi) ad finem, &c. ac pref. W. de mandato nostro obsequio nostro alibi intendat, & pref. I. pragnans sit & gravida, ac predict. B. languidus & impotens sui existit, per quod predict. W. apud Westm. ad diem in brevi contentum venire non potest, nec predict. I. & B. ad dict. diem & locum laborare non suffic. ad cong. &c. Nos eidem W. grat. volentes facere specialem in hac parte, & statui erundem. I. & P. compatiunt. in hac parte.

And if he in the reversion will levy a fine of his reversion unto another upon a Writ of Covenant sued forth against him, the Conufance shall be taken in the Common Pleas, but the fine shall not be engrossed until the Tenant for life have attorned; and the fine is said engrossed, when the Chirographer maketh Indentures of the fine, and delivereth them to the party to whom the Conufance is made, and then it is said that the fine is engrossed, and after that the Coun-

see shall not have a *Quid juris clamat* against the Tenant for life. But the course is, when he in the reversion upon the Writ of Covenant sued against him, maketh the Conusance of the reversion by Fine, &c. then upon that the Conusee shall have a *Quid juris clamat* against the Tenant for life; and if the Tenant for life be so weak that he cannot travel, then he may sue a *Dedimus Potestatem* directed to the Justices to take his Conusance, &c. and to certifie the same into the Common-Pleas.

2 H. 5. 1. And the like Writ of *Dedimus Potestatem* shall be granted, where the Lord by fine granteth the Services of his Tenant unto another upon a Writ of Covenant sued against him. If the Conusee sue a *Per quæ servitia* against the Tenant, then if he be weak, or sick, he may sue a *Dedimus Potestatem*, to take his Conusance, &c. and to certifie the same, &c. But 4 Mar. Dy. now the course is for to admit the Defendant in a *Quid juris clamat*, or *Per quæ servitia*, to make Attorney after a Plea 166. pleaded; and that especially where he pleadeth such Plea, that he shall forfeit his Estate, if it be found against him, &c. then it is clear, That he shall make Attorney after the Plea pleaded; and the course is now to make Attorney after pleading: and if he be adjudged to attorn, to award a *Disstringas ad attornandum* against him, &c.

And if a man have a writ of Covenant against one to levy a fine, and thereupon a *Dedimus Potestatem* directed to a Judge to take the Conusance of the party, and the Judge doth take the Conusance by force of the Writ, and will not certifie the same in the Common-Pleas, then the party may sue a *Certiorari* directed to the same Judge, reciting all the matter how he hath taken the Conusance, commanding him by the Writ to certifie the same into the Common-Pleas: and upon that an *Alias*, and *Pluries*, and Attachment to the Judge, if he will not certifie it or return it, or shew cause why he do not certifie it. And if the Judge be dead who took the Conusance, he may have a *Certiorari* to his Executors, and an *Alias*, and *Pluries*, and Attachment, *vel causam nobis significes*; and in the end of the Writ shall be this clause: *Et habeas ibi hoc breve, per quod cognitiones prædictæ. recepistis, & hoc breve. Mandamus enim Justic. nostris de banco prædict. quod cognition. & brevia prædict. sub sigillo nostro eis misistis, quod ea à vobis recipiant. Teste, &c.* And by that it appeareth, That although the *Certiorari* be sent to the Judge to return the Conusance taken before the Justices of the Common-Pleas, that yet he ought to sue forth another writ to be sent and directed to the Justices of the Common-Pleas, to receive

receive such Conufance taken : and the Writ of *Certiorari* which shall be directed unto the Justices of the Common Pleas to receive the Conufance, are in the Register amongst the Writs of Covenants.

C And if a man will levy a Fine of Lands holden of the King in chief, then he ought to have a special Writ unto the Justices of the Common-Pleas ; thus,

Rex Justic. suis de banco Salutem. Cum per literas nostras patentes de gratia nostra speciali concessimus L. quod ipse de maneriis suis de N. & I. cum pertin. quæ de nobis tenentur in capite feoffare possit W. &c. recitand. totam chartam (uſque ibi) orout in literis nostris prædict. plenius contineatur, ac breve nostrum de conventionione pendeat coram vobis in banco prædict. inter præd. I. & W. de maneriis prædict. ad finem inde inter eos secundum legem & consuetudinem regni nostri levand. ut accipimus, Vobis mandamus, quod finem illum inter partes præd. coram vobis in eodem banco levare permittatis juxta tenorem literarum noſtrarum prædict. &c.

D And if it do appear unto the Court, that the Lands are holden of the King in Capite, the Court *ex officio* ought not to suffer such Fine to be levied without such a Writ directed unto them, declaring the King's pleasure.

And there is another Writ of *Certiorari* directed unto the Treasurer and Chamberlains of the Exchequer, to certify the transcript of a Fine in the Chancery; and a Writ of *Mittimus* out of the Chancery directed to the Justices of the Common-Pleas to transcribe the said Fine, &c.

And another form of Writ of *Certiorari* directed unto the Chirographer, to certify into the Chancery *tenorem cujusdam note in Cur. Domini E. nuper Regis Angliæ, &c.* as appeareth in the Register.

Writ of Dower unde Nihil habet.

E A Writ of Dower, *unde nihil habet*, lieth in case where a woman taketh her husband who is sole seised of lands or tenements to him and his heirs in Fee-simple, or unto him and the heirs of his body, &c. Or if the Husband during the Marriage betwixt him and his Wife, be solely seised in Fee-simple, or in Fee-tail of such estate, that the issue begotten betwixt him and his wife may inherit the same. Then if the husband doth alien the same, or dieth seised thereof, or be thereof disseised, and dieth, his wife shall have a Writ of Dower, *unde Nihil habet*, against him who is Tenant of the Freehold of the Land, or against him who is

29 Aff. 68.
Br. Dower. 63.
Dower lieth not against Guardian in So-
cage, and therefore it is doubted if such a Guardian shall assign Dower if there be a disclaimer.

Guardian

Writ of Dower unde Nihil habet.

Guardian in Knight's service of the Land; and the form of the Writ is :

Rex Vic, &c. Præc. A. quod injuste, &c. redd. B. quæ fuit uxor C. rationabilem dotem suam, quæ ei contingit de tenemento quod fuit prædict. C. quondam viri sui in N. unde nihil habet ut dicit. Et unde queritur, quod præd. A. ei deforc. & nisi, &c.

And against the Guardian the Writ is such: *Præcipe A. Custod. terræ & hæredis J. quod reddat, &c. B. quæ fuit uxor C. &c.*

Otherwise where the Wife is endowed *ad ostium Ecclesiæ*. Thus: *Præc. A. quod redd. C. B. quæ fuit uxor C. Centum acr. terræ cum pertin. in N. de quibus prædict. C. quondam vir ipsius B. eam dotavit ad ostium Ecclesiæ. quando eam disponavit, unde nihil habet, &c.*

And if she be endowed *de assensu Patris*, then thus: *Præc. A. quod, &c. redd. B. quæ fuit uxor C. Centum acr. terræ, &c. de quibus prædict. C. filius & hæres ipsius A. quondam vir ipsius B. de assensu & voluntate ipsius A. patris sui eam dotavit ad ostium Ecclesiæ. &c. unde, &c.*

Perkins 67.
68. common
fans numbr.
& estovers.
Old Na. Br.
5. 2 E. 3.
Dower 23.

And the Writ of Dower *unde nihil habet*, may be sued in the County before the Sheriff by a *Justicies*.

And if a Wife shall be endowed of Advowsons, Villains; Commons of Pasture, and of other profit, or liberties, of which her Husband had any estate of Inheritance; which estate the issue betwixt them by possibility may inherit, &c.

And the Wife may sue a Writ of Dower of Lands or Tenements in London, and the Writ shall be directed unto the Mayor and Sheriffs of London, and the Writ shall be such :

Rex Majori & Vic. Lond. salutem. Præcip. vobis quod justicietis A. quod juste & sine dilatione, & secundum consuetud. Civitatis nostr. London. redd. B. quæ fuit uxor C. rationabilem dotem suam, quæ ei contingit, &c. in Lond. & justie. D. quod juste, &c. & secundum consuetudinem, &c. reddat eidem B. rationabil. dotem suam, &c. in eadem Civitate, unde nihil habet, &c. ut dicit, & unde querit. quod præd. A. & D. ei deforceant, rationabiliter monstrare poterit, quod ei reddere debeant, ne amplius, &c. Teste, &c.

And by that it appeareth, That a Woman shall have a Writ of Dower in London against several Tenants by a several *Justicies* in one Writ, as well as she shall have a Writ of Dower against several Tenants by several *Præcipes*, and all in one Writ. And the Process is Summons *Grand Cape* and *Petit Cape* in the Common Pleas.

Writ

Writ of Admeasurement of Dower.

F **T**HE *Writ of Admeasurement of Dower* lieth, where the heir when he is within age endoweth the Wife of more than she ought to have Dower of: Or if the Guardian endow the Wife of more than of the third part of the Land of which she ought to have Dower, Then the heir at his full age may sue this Writ against the Wife, and thereby she shall be admeasured; and the Surplusage which she had in Dower shall be restored to the Heir, but in such case there shall not be assigned anew any Land to hold in Dower, but to take from her so much of the Land which amounteth to above the third part of all the land of which she ought to be endowed.

And if the heir within age before the Guardian enter into the Land, do assign to the Wife more Land in Dower than she ought to have, then the Guardian shall have the Writ of *Admeasurement* against the Wife by the Statute of *West. 2. cap. 7.* And if the Guardian bring the Writ and do pursue it against the Wife; yet the heir at his full age by the same Statute shall have the *Writ of Admeasurement of Dower* against the Wife.

And the Writ is *Vitontiel*, and shall be sued in the County before the Sheriff, and the Writ is such:

G *Rex Vic', &c. Questus est nobis A. filius & heres B. quod C. quæ fuit uxor prædict. B. plus habet in dotem de liber. tenem. quod fuit prædict. B. quondam viri sui in N. quam habere debet, & ad ipsam pertinet habend. Et ideo tibi præcipimus, quod iuste & sine dilatione Admensurari fac. dotem illam, ita quod prædict. C. non habeat plus in dotem de hered. prædict. A. quam habere debet & ad ipsam pertinet habend. secund. rationabilem dotem suam. Et prædict. A. habeat de dote illa, id quod habere debet, & ad ipsam pertinet habend. ne amplius, &c. Teste, &c.*

And for the Guardian the Writ is such: *Questus est nobis A. Custos terr. & hered. C. quod C. quæ fuit uxor prædict. E. plus habet in dotem ipsius, &c. (usque ibi) ita quod prædict. C. non habeat plus in dotem de hered. prædict. heredis quam habere debet, &c. Et quod prædict. custos habeat de dote illa, &c. ne amplius, &c. Teste, &c.*

H And when the Plea is in the County, the Plaintiff may remove it without cause; and the Defendant may remove it with cause in the Writ, as in a *Replevin*. And if the Writ be removed in the *Common-Pleas* by a *Pone*, and process be awarded against the Defendant according to the Statute, which

which is Summons, Attachment and Distress, &c. Then the Sheriff cannot make the Admeasurement, but to extend all the Land particularly; and to return the same into the Common Pleas, and thereupon the Admeasurement shall be made by the Justices.

And if the Guardian assign for Dower, &c. more than she ought to have, and afterwards grant over his Estate, his Assignee shall not have a Writ of *Admeasurement*.

Perk. 19. d.
7 H. 2. Ad-
measure-
ment 4.

And so if the heir within age assign unto the Wife more in Dower than she ought to have, &c. The Guardian in Right may have a Writ of *Admeasurement*; but if he grant over his Estate, his Assignee who is Guardian in *Fait* shall not have the Writ, because it was a thing in action given to his Lessor, &c. and the heir shall have a Writ of *Admeasurement of Dower*, for Dower assigned in the time of his Ancestor.

12 H. 6.
Admeasure-
ment 9.

And if a Woman be endowed in Chancery by the King, &c. the heir shall have a Writ of *Admeasurement* against her if she have more assigned to her for her Dower than she ought for to have.

7 E. 2. Ad-
measure-
ment 13.

And if the Guardian do assign Dower more than she ought to have, the heir during his nonage shall not have a Writ of *Admeasurement*, but if he himself assign more for Dower than she ought to have, &c. then it seems reasonable, that he himself during his non-age have the Writ of *Admeasurement of Dower*.

But if the Wife after the assignment of Dower do improve the Land, and make it better than it was at the time of the assignment; an *Admeasurement* doth not lie of that improvement. But if the improvement be by casualty of a Mine of Coals or of Lead, which are in the Land, &c. which have been occupied in the Husband's time, the doubt is the more; but she cannot dig new Mines; for that shall be waste if she do.

And if the Ancestor dieth seised, and the Husband die before he entrench into the Land, yet the Wife shall be endowed, although her Husband had but a Possession in Law.

Perkins 89.
3 H. 7. 5.
21 E. 3. 21.

But a Man shall not be Tenant by the Courtesie of the Wifes Land, if his Wife had not a Possession in Deed, if it be not in special Cases; as of Advowson or Rent, where the dieth before the day of payment of the Rent.

And in that case, if the King's Tenant die seised, and the heir die before he enter; then the Wife shall be endowed.

But

But if the Heir enter and intrude upon the King's Possession, and afterwards die before he sueth his Livery ; ^{1 H. 7. 17.}
The Wife shall not be endowed by the Statute of *Prærogativa Regis*, cap. 12. which is, that if the Heir intrude upon the King's Possession, that *Nullum accrescit ei liberum tenementum*, &c. ^{4 H. 7. 1.}

E Where a Woman taketh a Lease for years of Land ; she shall not be endowed of the same Land during the Term. ^{2 H. 4. 7. Perkins 69. d.}

F And where the Estate which the Husband hath during the Marriage is ended, there the Wife shall lose her Dower. As if Tenant in tail do discontinue in Fee, and afterwards taketh a Wife and disseiseth the Discontinuee, or the Discontinuee doth enfeof him, and afterwards the Tenant in tail dieth seised, his heir is remitted, and the wife shall lose her Dower, because the heir is in of another Estate of Inheritance, than the Husband had during the Coverture.

And so if a man have title of Action to recover any Land, and afterwards he entreth and disseiseth the Tenant of the Land, and dieth seised, and his heir entreth, The heir is remitted unto the title which his Auncestor had, and the Husband's wife shall lose her Dower ; for that Estate which the Husband had is determined, for that was an Estate in Fee by wrong, and the heir hath the estate in Fee which his Auncestor had by Right.

G If a man make a gift in tail, reserving Rent to him and his heirs, and afterwards the Donor hath a wife, and the Tenant in tail dieth without issue, The wife of the Donor shall not be endowed of the Rent, because the Rent is extinct, for it was reserved upon the state tail which is ended : But although that the Tenant in tail dieth without Issue, yet his wife shall be endowed, because the Land continueth and is not determined as the Rent is. ^{10 E. 3. Avowry 159. Perk. 63. d.}

H If the Grand-father dieth seised, and after the Father dieth seised, and the Son hath the Land, and then the wife of the Grand-father is endowed of the third part of the Land and dieth, yet the wife of the Father shall not have Dower of that third part, because *dos ex dote peti non debet*. ^{46 B. 3. 24. Finchden. Perkins 62. 45 E. 3. 13.}

I And if the Husband be Tenant in Common with two other in Fee of certain Lands, and dieth, his wife shall be endowed of the third part of that Land, only with metes and bounds to hold in Common, &c.

K And if a wife be endowed of a Mill, or of an Office, she shall have the third part of the Profits thereof assigned unto her, and she shall have a Freehold in the third part of the Mill, &c. ^{45 E. 3. Dower 50. 1 H. 5. 1. Perkins 67. g.}

Lit. 8. 12

H. 4. 1. D. 2. &

Stat. 13.

A woman of the age of 9 years or more at the death of her Husband shall have Dower of his land. And if she be of less age at the death of her Husband, then she shall not have Dower.

If a woman be endowed, and afterwards loseth by action tried, if she pray in aid of him in the reversion, she shall be new endowed of that which remaineth.

If the husband exchange land, &c. and afterwards dieth, if the wife have Dower of the third part of the land taken in Exchange, she shall not have Dower of the other Land, &c. which was given in Exchange.

Lit. 10. d.

That he
hath a Free-
hold.

45 E. 3. 6.

Candlish. ac
to this here.

If a woman be Guardian in Socage, and she bring a writ of Dower against a stranger, he may plead, that she holdeth other land in Socage of which she may endow herself, *de le plus beale*, and then the wife upon that may endow herself of those lands unto the value of the third part which she ought to have of the other lands which the Guardian holdeth, &c. And whether she may endow herself of the *plus beale* unto the value of the third part which she ought to have of her Husband's land or no, *Quere*; for some hold, That Dower *de plus beale*, shall endure but during the minority of the Heir who is in ward.

22 E. 3.

Dower 131

Perk. 64. 2.

The Son would have endowed his wife of a Reversion of a land which one held for life, *ex assensu patris*; and it was holden that it was not good, *M 4. E. 3.* because it was not in possession; whereof a Right of Dower may be claimed.

And the writ of Dower *ex assensu patris* lieth as well against the Guardian, as against the Tenant of the Freehold.

If the Tenant forejudge the *Mesn*, yet the wife of the *C Mesn* shall be endowed.

5 E. 3.

Dower 129.

If a man recover in value against the Husband by a warranty *Auncestrel*; yet the wife shall be endowed, because the same is by force of the warranty made, and not by reason of Eigne Title to the land.

The younger Son shall not assign Dower to his wife *ex assensu patris* of the Father's land, because he is not heir apparent.

Perk. 68. 2.

13 E. 19.

Dower 161.

If the husband enter into Religion, the wife shall not have Dower during his life.

The wife shall have the third part of the Advowson for her Dower.

43 E. 2. 19.

Perkins 70.

b.

If the wife do elope from her husband, and remain with the Adulterer she shall lose her Dower; But if she remain in Adultery upon the husband's Lands or Tenements, she shall

shall have Dower, because the same is not an Elopement.

I If the Husband be attainted of Felony by Outlawry or otherwise, she shall lose her Dower.

K If one Joyntenant make a Feoffment of his part, his wife shall not be endowed because her Husband was never sole seised.

L Endowment *ex assensu matris* is good; but *ex assensu fratris*, it's holden it is not good.

And Dower *ex assensu patris* after the Marriage is good.

M If a man marry a woman in a Chamber, Dowment *ad ostium Camere* is not good.

N Dowment *ad Ostium Ecclesie* of the moiety of the Land, is good.

3 H 6. 4.
Lesse for
life maketh
a Feoffment
in Fee, his
Wife shall
have Dower
against the
Feoffee, but
not against
the Lessor.

And a woman married in a Chamber shall not have dower by the Common Law, *H. 16. H. 3. Quere* of marriages made in Chappels not consecrated, &c. for many are by Licence of the Bishop married in Chappel, &c. And it

seemeth reasonable, That in such cases she shall have Dower.

And in some places the wife shall have the Moiety in Dower; as in Gavelkind.

And in some Cities she shall have all by the Custom which is called Free-Bench, &c. And *Glanvil* saith, That *ad ostium Ecclesie*, a man cannot assign more than the third part in Dower, and if he do the wife shall be admeasured, &c. but less may be assigned by Law; yet at this day it seemeth, That the assignment *ad ostium Ecclesie* of more than the third part is good, and she shall not be admeasured for it.

Q And the wife shall not be distrained in the lands which she holdeth in Dower, for the debts of the Husband in his life due to the King, nor in the lands of inheritance of the wife, nor in the lands which she hath by purchase made by the husband to him and his wife, and unto their heirs; And if she be distrained by the Sheriff, she may sue forth such writ.

Rex Vic', &c. Cum secund. legem & consu. Regni nostri Angl. mulieres in terris & tenement. que tenent in dotem de dono virorum, vel que sunt de hereditate sua, vel q. sibi perquiser. pro debitis virorum suorum reddenda. distringi non debeant, ac tu B. que fuit uxor A. distringis in terris & tenement. suis, que tenentur in dotem de dono predict. A. & etiam quam fuer. de hered. ipsius B. sicut ex querela sua accipimus: Tibi precipimus, quod ipsum B. in terr. & tenemen. suis que tenentur in dotem, vel sunt de hereditate sua propria, vel ex quasito ipsius B. pro debito
ipsius

Writ of Admeasurement of Dower.

ipſius A. quondam viri ſui redd. non diſtringi fac. contra legem & conſuetudinem prædict. & diſtrictionem quam, &c. ei redeliberari fac. &c. Teſte, &c.

There is another form of Writ in the Register for Tenant in Dower, which is directed unto the Sheriff, commanding him that he do not diſtrain the wife in thoſe lands which ſhe holdeth in Dower, or of her own Inheritance for the Huſbands debt; but that Writ hath theſe words in the end of the Writ, *Dum tamen hæredes & executores teſtamenti ipſius A. ad debita illa nobis reddend. ſufficient non diſtr. &c.* And by theſe words in the Writ it ſeemeth that if the heir of the Executors have not ſufficient of Lands or Goods to pay the debt, that the wife ſhall be charged and diſtrained for the debt of the Huſband in thoſe Lands. But it ſeemeth reaſonable that the wife ſhall not be charged or diſtrained for the joynt purchaſe made to her huſband and her, nor for her Lands of Inheritance, nor in the Lands wherein ſhe hath title of Dower before the Huſband become indebted to the King. And that the firſt Writ is according to the Law for thoſe caſes. But if the Huſband be indebted unto the King before ſhe have title of Dower, it ſeemeth to be otherwiſe.

And there is another Writ in the Register for the wife directed to the Sheriff, that he do not diſtrain her in Lands or Tenements which her huſband and ſhe purchaſed jointly before the huſband was indebted to the King, if they purchaſe the Land jointly to them in Fee, the Lands after the death of the huſband in the hands of the wife and her heirs ſhall be diſcharged of the debt, and if he be diſtrained that he deliver them again to the wife.

And by the ſame reaſon, altho' the Huſband be before indebted to the King, that if he and ſhe purchaſe the Land jointly in Fee to them, after the death of the Huſband, the wife and her heirs be diſcharged of that debt. And there is another Writ in the Register, for the Tenant in Dower, directed to the Sheriff, that he do not diſtrain the wife for the Huſband's debt, becauſe that the heir who ought to pay the ſame out of the Lands is within age, and in ward to the King. Or becauſe that other Tenants who ſhould be charged with the payment thereof, are omitted.

And ſo it ſeemeth the Lands of the Tenant in Dower ſhall be diſcharged if there were other Lands of the Huſband to pay the debt. And thoſe Writs appear in the Register. fol. 142, 143.

And

- A * And another Writ directed to the Sheriff, that he do not distrain the wife who holdeth Lands in Dower for the debts of the husband which he owed to the King before the contract of marriage between him and the wife, nor the Lands which the husband and wife purchased jointly in fee for the husband's debts which he became debtor for, before the purchase. And she may have such writ out of the Chancery directed unto the Treasurer and Barons of the Exchequer, commanding them that they enquire thereof, and if they find the same, that they surcease and discharge the wife with this Proviso in the writ: *Proviso, Qd. debita illa de execut. & her. præd. A. ac tenenti. terrar. quod sua fuer. & que inde de jure debent onerari ad opus nostr. levent. ut justum est. Teste, &c.*

[151]

* Ve. 50 Aff.
5. Br. charge
24. the husband & wife
before marriage purchase a lease for years, the husband dieth, the lease extended for the King's debt

Writ de Consuetudinibus & Servicitiis.

- B THE Writ of Customs and Services is in its nature a writ of Right, and lieth sometimes for the Lord who hath a Fee in the Seignior, and sometimes for the Tenant in Tail of the Seignior, or for Tenant in Dower, or Tenant for life, or for him who hath a less estate than a Fee, and the writ is close, and not Patent, and shall be directed unto the Sheriff, and shall be returnable sometimes into the Common Pleas, at the pleasure of him who sueth the writ. And that writ may be sued in the County before the Sheriff by a Justices.

- C And the Writ lieth where the Tenant doth deforce the Lord of the Service which he ought to do, or of the Rent which he ought to have, as well as of Service. And the form of the Writ which is returnable in the Common Pleas is:

- D *Rex Vic', &c. Præ. A. quod, &c. faciat B. consuetud. & servic. quod ei facer. debet de libero tenemento suo, quod de eo tenet in G. ut in redditibus, arreragiis, & aliis. Vel sic; In Homag. releviis & al. Vel sic; In sectis cur. & aliis & nisi, &c.*

And if the party were not seised of the Services and Tenements which he claimeth, but his Ancestor, then he shall not say in the Writ, *ut in arreragiis, &c.* but omission shall be made in the Writ of the Services.

- E And if the writ be sued in the County before the Sheriff, then the Writ is such:

Rex Vic', &c. Justices A. quod, &c. fac. B. cons. & reff. servic. &c. ut supra, sicut rationabiliter monstrar. poterit, quod, &c. ne amplius, &c.

- F And a man may sue several Tenants by one Writ of Customs and Services by several *Præcipes* in the Common Pleas,

Pleas, or by one Writ and diverse *Justit*, in the Writ which shall be directed unto the Sheriff to hold plea upon them. But if the Writ of Customs and Services be sued against several Tenants by several *Præcipes* in the Writ, and returned into the Common Pleas, then all the *Præcipes* shall be put together thus. *Præcipe A. quod fac. B. &c. Et præc. C. quod, &c. fac. D. &c. Et præc. F. quod, &c. fac. G. &c.* And in the last *Præcipe* shall be put this clause, *In redditibus & aliis*, and this word *arreragiis* shall be left out.

2 E. 2. Fitz.
Droit 28

And when the writ is in the Right only, then he shall count of the seisin of his Ancestor, and the writ only in the *Debet*; But when he counts of his own seisin, then the writ is in the *Debet & solet, &c.*

N.B. 38. the
Disclaimer
ought to be
in a Court
of fend and
not in the
County.

And disclaimer lieth for the Tenant in this writ against H the Demandant.

And note that if he say in the writ, *Ut in redditibus & arreragiis*, that those words prove that the Demandant himself was seised of the services, and then if he count in such writ of the seisin of his Ancestors, and not of his own seisin, the writ shall abate, *quod ve. & E. 1. title Droit.*

But if he will bring a writ of Customs and Services of K the seisin of his Ancestors, he ought to leave out those words out of the writ, *Ut in redditibus & arreragiis, &c.*

And a writ of Customs and Services doth not lye against Tenant in Frank-marriage, until the fourth degree be past, &c. if not, that he hath done homage to the Lord, &c. for by so doing he is concluded, &c.

And if a man will bring a writ of Customs and Services L against any Tenant, and by his Count demand homage, then the writ ought to make special mention thereof, as to say *Ut in homagio, &c.* otherwise the writ shall abate.

And if a man holdeth divers Manors in several Counties M by one Service, &c. if the Lord be deforced or kept from his Services, he shall have several writs of Customs and services, for each county one writ, and shall have them returned at one day, in the Common Pleas, and then he shall count upon them, as his case is, which see in the tit. of Droit 30 E. 1. N

And note that this writ is a *Præcipe quod faciat, &c.* and where he demandeth Land, then the writ is *Præcipe quod reddat, &c.* and in this writ the mise shall be joyned, if the writ be brought by Tenant in fee of the Tenancy by him who hath a Fee in the Seigniory. But if the writ be brought by Tenant in dower, or Tenant in tail, against the Tenant in Fee-simple, it is a question how the mise shall be joined. But, I think, the mise shall be joined in that case

case, and the weakness of the estate on the part of the demandant shall not out the Tenant of the Plea, which the Law giveth him to join the mise, but if the Writ be brought against Tenant for life, where the remainder is over in Fee, there the Tenant may pray in aid of him in the remainder, and then they may join the mise with the demandant, &c. But where the demandant, who hath the particular estate, bringeth the Action, although he pray in aid of him in the reversion to join the mise, it is hard to be done, &c. But it seemeth reasonable, that the same law which enableth him to bring the action, the same law ought to enable him for to join the mise upon the Plea of the Tenant.

Writ of Annuity

A Writ of Annuity lieth in case; Where a man granteth unto another a yearly rent for life, or for years, or in Fee out of his Lands, or out of his Coffers, or to receive from his person yearly at a certain day; now the grantee may sue a writ of Annuity for the same, &c. if he be behind at the day of payment, &c. And if it be granted out of the Land with a clause of distress, then he may chuse either to distrain for the same, and make it a rent charge, or he may bring a Writ of Annuity for the same. But if he bring a Writ of Annuity for it; if the Defendant appear, and the Plaintiff declare thereupon, then he cannot distrain for it after. And in like manner, if he do distrain for it and avow, the he shall not sue a Writ of Annuity for the same rent. But if a man grant a yearly rent for life, for years or in Fee, and doth not express in the grant that it shall be taken out of any Lands or Tenements, nor any distress granted for non-payment thereof, then it is meerly taken for an Annuity; and he shall not have any other remedy for the same, but a Writ of Annuity.

[B] And this Writ may be sued before the Sheriff in the County by Justices as well as in the Common Pleas, and the form of the Writ in the County is such:

Rex Vic, &c. Præc' tibi, quod justiciæ A. quod juste, &c. redd. B. centum marcas, decem quarteria frumenti, & xx. robas, quod ei a retro sunt de annuo redditu C. s. duorum quart. frumenti, & unius robe, quæ ei debet, ut dicit, sicut rationabiliter monstrare poterit, quod ei redder. debeant, ne amplius, &c.

The Plaintiff in Annuity had Judgment to recover damages, and thereupon

brought a Scire Facias in B. R. to execute judgment, and good. 14 H. 3. Estra. Mefne.

D d 2

And

34 H. 6. 20. And the form of the Writ in the Common Pleas is :
 3 H. 6. An- *Rex Vic', &c. Præcipe A. quod iuste, &c. redd. B. cent. marc.*
 nuity 2. 16 *& medietatem trium pannorum, cum pellura, & duorum panno-*
 E 3. Annui- *rum cum sindone, quod ei a retro sunt de annuo redditu decem*
 ty 22. If a *marcar. & medietatis unius panni cum furrura, & unius panni*
 man bring *cum sindone, quod ei debet, &c. & nisi, &c.*
 Annuity &
 the same
 extinguish or determine pendent the Writ, the Plaintiff cannot have Judgment
 in the Writ, but is put to his Action of Debt.

And note, that in that Writ the form is, *Quem ei debeat*, C where he demandeth other thing than mony. And yet in a Writ of Debt, the form is, that he say in the Writ, *Quas ei debet*, if not, that he demand mony, for if he demand Robes or Corn, or such like Chattels ; the Writ shall be, *Quæ vel quas ei detinet*, and not *debet*, &c.

And in Debt if a man demand Mony, and also ten Quarters of Wheat, then the form of the Writ is :

Præc. A. quod iuste, &c. redd. B. decem libras, &c. quas ei debet, ac dec. quarteria frumenti quæ ei iniuste detinet, &c.

9 H. 6. 12.
and 13.

And if a man have an Annuity of 20 l. to receive of A. D and he grant 10 l. of the same to another man to receive of A. A shall not be charged by that grant, but the Grantor only by writ of Annuity : But if he had granted 10 l. parcel of the said Annuity, it seemeth then that the Grantee ought to charge him who ought to pay the 20 l. by a writ of Annuity.

And the writ of Annuity ought to be brought in the E County where the Grant was made; But an Annuity to receive from a man of Religion, or a body Corporate, or from a Church, ought to be brought where the Church or house is, or where the seisin is alledged.

42 E. 3. 5. ac.
15 E. 4. 16.

And the heir shall be charged by a writ of Annuity upon F the Grant of the Father if he have Assets by descent. But an Annuity shall not be maintainable against the heir by prescription, because it cannot be known whether he hath by descent from the same Ancestor, &c. by whom the Annuity was first granted.

Ve. 14 H. 4.
19.

And the writ of Annuity shall be maintainable against a G Parson upon a Grant made by his Predecessor, with the assent of the Patron and Ordinary ; and so upon an Ordinance made by the Ordinary without the Patron, if he have *Quid pro quo*.

And Annuity granted by the Bishop with the confirmation of the Dean and Chapter, shall bind the Successor of the Bishop.

And

H And if a man grant unto another 40 s. or a Robe yearly at such a day, &c. after the day he may demand the one or the other at his Election.

And an Annuity shall be maintainable by a Parson against a Vicar, upon an Ordinance of the Ordinary, if he have *Quid pro quo*. 16 E. 3. Annuity 34.
20 E. 3. Annuity 32.

I Upon debate of an Advowson between a Prebend and a Prior, the Ordinary made a Composition and Ordinance, that the Prebend should have an Annuity of 20 s. and the Prior the Advowson for ever, and that did charge the Prior in a writ of Annuity and his Successors, T. 9 R. 2.

K And in the time of vacation the Patron and Ordinary may by their Grant charge the Church for ever, as appeareth in the same year. 1 Ma. Dyer, 92.

L And if the King grant one an Annuity for life or years he ought to express in the grant by whose hands he shall receive the Annuity, as to say, *Per manus Vic. de S. vel ball. nostror. de manerio nostro de S.* and then the Bailiff or Sheriff shall have allowance upon his Patent shewed, if he hath paid the same, and if he have not such words in the Grant of Annuity, the Grant is void, for he cannot sue the King for it, and no person is bounden to pay the same unto him, if he be not expressed and named in the Patent, &c. 9 H. 6. 33. If a man grant 10 s. parcel of Annuity of 20 s. and in truth there is no such Annuity, the grant is void. But if it be granted to receive out of such a Sum, and there is no such Sum, yet the same is good to charge the person of the Grantor. Ve. Annuity 5. to receive in 10 l. or de 10 l. no difference.

A Process in a Writ of Annuity is Summons, Attachment and Distress. And for default of Distress, &c. Process of Outlawry, by the new Statute made, Ann. 23 H. 8. cap. 14.

ted to receive out of such a Sum, and there is no such Sum, yet the same is good to charge the person of the Grantor. Ve. Annuity 5. to receive in 10 l. or de 10 l. no difference.

Writ de Procedendo ad Judicium.

B **T**HE Writ to proceed unto Judgment lieth where Judges of any Court delay the party, Plaintiff or defendant, that they will not give Judgment for him when they ought so to do, &c. then the party grieved, shall have this writ directed unto the Judges, and the form of the writ is such :

Rex Majori & Vic. Lond. sal. Quia redd. iudicii loquela que est coram vobis in Hustingo nostro Lond. sine brevi nostro inter A. & B. de quadam transgress. eidem A. per pref. B. illat. ut dicitur, diutina cepit dilation. ad grave damnum ipsius A. sicut ex querela sua accepimus, vobis precipimus, quod ad iudicium inde redd. cum ea celeritat, qua secundum legem & consuetud. civitat. pref. fieri poterit procedat. Teste, &c.

Writ de Procedendo ad Judicium.

And upon that Writ he shall have an *Alias* and a *Pluries* C directed unto them, if they will not proceed, and afterwards an Attachment upon that directed to the Coroners, &c. returnable into the King's Bench or Common Pleas, and it appeareth by the Writ that it lieth as well against Judges of Record as other Justices: D

1 Ma. Dyer
10. the o.
pin. cont.

If a man pray in aid of the King in a real action, and the aid be granted, it shall be awarded, that he sue unto the King in the Chancery, and the Justices in the Common Pleas shall stay until the Writ of *Procedendo in loquela* come unto them, E

And then they may proceed in the plea, until it be come that they ought to give Judgment for the Plaintiff, and then the Justices ought not to proceed unto Judgment, until the Writ cometh to them to proceed to Judgment, which is called a writ *De procedendo ad judicium*.

27 H. 8. 9.
Eliz. Dyer,
257, 258.
Vi. 28 H. 6.
4.

And so it is, if the Defendant in a personal action pray in aid of the King, and the aid be granted, now the Judges ought not to proceed until *Procedendo in loquela* comes unto them, and then they may proceed and try the issues joined; But yet they shall not give Judgment until a writ cometh to them to proceed to Judgment.

And if the King by his writ certifie to the Justices that the lands are seised into his hands, &c. then they shall stay until the writ *De procedendo in loquela* be afterwards sent unto them. F

And so, if it appear to Judges of Record, that the lands are seised into the King's Hands, or if it appear to the Court by pleading or shewing of the party, that the King hath interest in the Land, or shall lose Rent or Service, there the Court ought to stay until they have from the King a *Procedendo in loquela*, and if the *Procedendo* be directed unto any of the Judges to proceed, it is good, although it be not directed unto them all.

And if a man have aid of the King, the *Procedendo* ought to make mention of the aid prayer, and recite the same in the writ, commanding them for to proceed in the plea, otherwise it is not good.

And if Conuſance of plea be granted, &c. in an action real sued in the Common Pleas, and afterwards in the Franchise, and the Tenant pray in aid of the King upon a good cause, and hath the aid granted; the *Procedendo* shall be parted to them in the Franchise. G

And if the King write unto the Justices to prorogue the Assise because the Defendant is in his Service, yet the Justices ought to proceed, and not to stay for the same. H

And

I And if verdict pass for the Plaintiff in Assise of Novel diff. before the Justices of Assise, and before they give Judgment by a new Commission new Justices are made, then the Plaintiff in the Assise may sue forth a *Certiorari* directed unto the other Justices to remove the Record before the new Justices, that they may proceed unto Judgment, and the form of the writ is such :

Rex dilectis & fidel. suo E. salutem. Monstravit nobis H. quod cum ipse nuper arrain. quandam ass. novel. diff. coram dilectis & fidelibus nostris H. de T. & B. nuper Justiciariis nostris ad ass. &c. assign. per breve nostrum versus R. &c. & alios, &c. contentos, de tenementis in L. ac licet vos & prefat. B. ass. illam secundum legem & consuetudinem regni nostri ceperitis, judic. tamen super veredicto ass. predict. pretextu cujusdam commissionis nostre, dilectis & fidelibus nostris I. de C. & I. I. de omnibus ass. juratis & certificatis coram quibuscunque Justiciariis nostris in Com. predict. per breviam nostram arrain. capiend. postmod. fact. adhuc restat reddend. in ipsius H. damnum non modicum & gravamen, per quod expediens est & necesse, quod predict. I. de C. & I. super record. & process. ass. pred. coram vobis & pref. B. habet. certiores vobis mand. quod rec. & proc. &c. tangentibus pref. I. de C. & I. sub sigillo vestro distincte & aperte sine dilatione mittatis, & hoc breve. Mandamus etiam I. C. & I. quod receptis & visis record. & process. pred. ad iudicium pred. secundum legem & consuetudinem regni nostri procedant. Teste, &c.

And the party Plaintiff may sue another writ unto the new Justices, that when the record is sent unto them by the old Justices, that they receive and look upon the Record, and then to proceed to Judgment, and the form of the writ is such :

Rex dilectis & fidelibus suis R. de C. & I. de I. & Justic. ad ass. &c. assign. salut. &c. Monstravit nobis, H. &c. (ut supra, usque ibi) coram dilectis & fidelibus nostris I. B. & vobis pref. I. de C. nuper Justiciariis nostris, &c. de tenementis in L. & postmod. ad prosecutionem ipsius H. nobis suggerent. prefat. B. & vos pref. I. de C. ass. illam cepisse, & ad iudicium, &c. distulisse, mandaver. prefat. B. quod record. & process. ass. predict. coram eo & vobis pref. R. de C. habit. una cum brevi originali, &c. vobis prefat. R. de C. & I. de I. dilecto & fidei nostro C. de L. postmodum Justic', &c. assign. distincte & aperte mitter. & breve nostrum quod sibi inde venerit, vobis & prefat. R. de C. I. de I. & prefat. C. de L. per aliud breve nostrum dederimus in mandat. quod receptis & visis record. & process. predict. ad iudicium predictum

Writ of Proceeding unto Judgment.

secundum legem & consuetudinem regni nostri reddend. procederitis. Et licet idem B. record. & process. ass. præd. coram vobis præfat. R. de C. I. de I. & præf. C. de L. misisset, Judiciis tamen ass. præd. adhuc restat reddend. in ipsius A. damnum non modicum & gravamen; Nos ea de causa negotium prædictum, quatenus secundum legem & consuetudinem regni nostri poterit maturari volentes, & idem H. ulterius inde fieri justitiæ complementum: vobis mandamus, quod vos vel duo vestrum visis & examinatis record. & processu præd. ad Justic. præd. secundum legem & consuetudinem regni nostri reddend. procedatis. Teste, &c. A

And upon that Writ if the Justices do delay to give Judgment he may have an *Alias*, and afterwards a *Pluries* directed unto the same Justices, *vel causam nob' significetis*; and if the Justices upon the Writ will not give Judgment according to the Writ, *Quere* whether the Plaintiff may have an Attachment against them, because they are Justices of Record.

But see in the Register amongst the Writs to remove records, many writs to proceed to Judgment, &c. of several forms. B

And if the Chaplain of a Chauntry bring an Assise of *Novel disseisin* against another Chaplain for lands, and the defend. claimeth the same Chauntry by the King's Collation and prayeth in aid of the King; now if the Defend. cannot shew title in the Chancery for the King, he may have a *Procedendo*, directed unto the Justices of Assise, that they proceed unto the taking of the assise, notwithstanding the allegation made of the King's collation; and he may sue the like writ where the Defend. doth pray in Aid of the King in Assise by the King's grant, and have that granted if he cannot shew matter in the *Chancery*, which proves the K's title, the Plaintiff shall have a *Procedendo*, That they proceed to take the Assise, notwithstanding the allegation made of the King's Grant. C

And there are divers Writs in the Register directed unto Justices of Assise, that they do not proceed in the Assise against the Defendant *dummodo sit in servitio Domini Regis* in the war, but to continue them; but these Writs are made by virtue of an Act of Parliament made for that time as it seemeth. But if the King certifie by his Writ unto the Justices, That the lands are in his custody, by reason of non-age of any heir, or by an Inquisition taken and returned in the Chancery, commanding that they do not proceed, the King not consulted with; then it seemeth the Justices ought to stay for the time, although there is not any Office found nor returned; for they are bound to give credit to the King's certificate, although that it be not true &c. And in

In attaint for the Plaintiff if he be in war in the Kings service, he may have a Writ directed to the Judges of the Common Pleas, to continue the Attaint, and to adjourn it to a certain day, &c.

E And in Assise of *Novel diff.* if the King send his Writ to the Justices reciting that the Defendant holdeth the land of the King by gift by his Charter for life, commanding them that they do not proceed, the King not consulted: Now although the Tenant will not plead the same, it seemeth, that by that writ the Justices ought to stay their proceeding. So if the King recite in the writ, the Tenant is in his service in war beyond the Seas, or in *Scotland*, and that he holdeth for life by the King's Charter of the King's gift, commanding them not to proceed, the King not consulted, but to continue the Assise until a certain day, there, it seemeth, they shall stay their proceedings; for the Tenant cannot plead it, &c. For if the Escheator will say, That he hath seised the Lands into the Kings hands in an Assise brought by any person, in that case the Court shall surcease, a *fortiori*, by the King's Certificate: and divers such writs are in the Register, &c.

F In Assise of Lands and Tenements, the Defendant pleads two or three records in bar to divers parcels of the Land which are in the Treasury, and the Plaintiff denieth those Records, the Defendant ought for to remove those Records out of the Treasury by a *Certiorari* directed unto the Treasurer and Chamberlains of the Exchequer. And if he sue forth such a *Certiorari* to the Treasurer, and Chamberlains, and they certifie some of the Records in the Chancery to the King, and moreover certifie, That there are other Rolls of the same Justices, of which they have not yet made full search. Upon that Certificate made by the Treasurer and Chamberlains in the Chancery, the King shall send his Writ unto the Justices, commanding them to continue that Assise until the next Assises, that full search may be made of those Records, so that the Tenant lose not his Lands for faileur of the Records: and such writ is in the Register:

And if a man sue an Assise before the Justices of Assise, G and the Tenant plead Bastardy in the Plaintiff, upon which a writ is awarded to the Bishop to certifie at the next Assises; and before the next Assises the King maketh new Justices, and the ancient Justices do certifie the Record of Assise unto the Treasury, the Plaintiff ought for to sue a *Certiorari* to remove the Record out of the Treasury

ry into the Chancery by a writ to the Treasurer and Chamberlain, and upon that Record sent unto the Chancery, he shall have a writ of *Mittimus* sent unto the Justices reciting the matter; and in the end of the Writ shall be this clause:

[155]

Nos ut partibus prædictis in eadem ass. fieri valeat quod iustum est, record. & process. præd. placiti. quæ coram nobis in Cancellaria nostra certis de causis venire fac. vobis mittimus sub pede sigilli nostri mandantes, ut his inspectis, necnon certif. præd. Episcopi coram vobis super hoc, ut dicit missa, ac recepta a Vic. Com. prædict. brevi originali ejusdem, quod penes ipsum remanet, sicut per inspection. eorund. record. & process. nobis constat iterum in eadem ass. juxta tenorem brevis & placiti prædicti procedat. & eisdem partibus fieri fac. quod de jure & secundum legem & consuetudinem regni fuerit faciendum. Mandamus enim eidem Vic. quod dictum breve vobis liberet ad proximam Session. vestram in Com. prædict. Teste, &c.

And if a man sue an Assise before Justices against one A Tenant, and in the same Assise he name the Mayor and Commonalty of any Town as Disseisors, or Bailiffs of any Liberty as Disseisor, unto the end they may not have Conusance of the plea; or that they shall not make the panel; Now he may sue a special Writ in the nature of an *Audita querela* directed unto the Justices of Assise to enquire of the matter, and to do Right unto the parties, and if it be found, it shall abate the Assise, *Vi. Statute 9 H. 4. cap. 5.* and see the like Statute made for the Sheriff. *Anno 11 H. 6. cap. 2.*

But the Sheriff or Bailiff ought to shew the matter unto the Court, and pray that it be enquired of &c.

Writ de quod ei deforceat.

THE Writ of *Quod ei deforceat* lieth, where Tenant in B Tail, or Tenant in Dower, or by the Courtesie, or for term of life lose their Lands by default in a *Præcipe qd. reddat* brought against them, Then they have not any other remedy if they were summoned according to the Law, &c. but this writ of *Quod ei deforceat*: and this Writ is given by the Statute of *Westm. 2. cap. 4.* and the Writ is mentioned in the Statute, and the form is such:

Rex Vic. &c. Præcipe A. quod, &c. redd. B. quæ fuit uxor C. unum mesuagium cum pertin. in N. quod clamat esse rationabilem dotem suam, Vel sic, Quod clamat esse de rationabili dote sua, & quod idem A. ei injuste defore. ut dicit.

And if the tenant in Frankmarriage bring the Writ, then D the Writ is;

Quod

Quod iuste, &c. reddat B. unum messuagium cum pertin. quod clamat esse jus & maritagium suum, & quod idem A. ei iniuste deforceat.

And if he be Tenant in Tail, then the writ is,

Quod redd. &c. quod clamat tenere sibi & hered. de corpore suo exeuntibus & prædict. A. ei iniuste deforc.

And for Tenant for life the writ is,

Quod clamat tenere ad terminum vite sue. Vel, for Tenant by Courtesie, Quod clamat tenere per legem Angliæ.

And the Register is, That this writ for Tenant by the Courtesie, is by Equity of the Statute. But if the Tenant in Tail, or such other Tenant who hath a particular estate, lose by default where he is not summoned, &c. Then he may have a writ of disceit, or a *Quod ei deforceat*, as he pleaseth.

If a man lose by default in an action of wast sued forth against him, he shall not have *Quod ei deforceat*, for the verdict which found the wast.

And if a man lose any Land by default in a Writ of Right in a Court Baron, he may remove that Record into the Common Pleas, and then a *Quod ei deforceat* upon that Record; and so he shall have the *Quod ei deforceat*, although he do not remove the Record; but then it seemeth, That the *Quod ei deforceat* shall be sued in the Common Pleas, or in the Court Baron, where he loseth the Land, as he pleaseth, *tamen Quere.*

2 H. 4. 2.

Hankford. contr.

41 E. 3. 8.

ve. 44 E. 3.

4 2.

2 E. 4. 11.

10 E. 4. 21.

10 H. 7. ac.

And the *Quod ei deforceat* lieth against a stranger to the Recovery; as if a man recover by default, and maketh a Feoffment, The *Quod ei deforceat* shall be brought against the Feoffee.

And if a woman lose by default, and taketh Husband, she and her Husband shall have the *Quod ei deforceat*: But if Tenant in Tail loseth by default and dieth, his heir shall not have the *Quod ei deforceat*, but a *Formedon*; for that is his writ of Right.

Where a woman hath Dower assigned her in the Chancery for the non-age of the heir, who is in Ward to the King; and afterwards the heir at full age sueth a *scire facias* in the Chancery against the Wife to avoid that endowment, and recovereth in that *Scire facias* by default of the Wife; Now the Wife shall have a *Quod ei deforceat* in the Common Pleas upon that Recovery.

And so if a man recover in the King's Bench any land by default, upon a *Scire facias* sued out of any Record which is there, the Tenant who lost by default, shall have his *Quod ei deforc*, and shall sue the same in the Common Pleas,

If

46 E.3.21.

If two Coparceners Tenants in Tail lose their Lands by H
default, they shall joyn in a *Quod ei deforceat*, and yet the de-
fault of the one is not the default of the other. M. 46 E.3. 1

And in a *Præcipe quod reddat*, if the Tenant for life or in
tail appear, and after depart in despite of the Court, he shall
lose his Land, and yet he shall have a *Quod ei deforceat*, for
that recovery is by his default, because he did not appear
when he was demanded.

And if Tenant in tail, or Tenant for life after the mise
joyned in a writ of Right depart in Despite of the Court, he
loseth his Land, and there he shall not have a *Qd. ei deforc'*, be-
cause Judgment final shall be given against him in that case. A

Old N.B.

155. cont.

10 E.4. 2.

cont.

If the husband and wife be seised of Land in the Right of
the wife, for the life of the wife, and they lose the Land in
a *Præcipe quod reddat* by default, yet they shall have a *Quod
ei deforceat*, &c.

And if Tenant for life loseth his Land in a *Cess*, brought
against him by default, yet he shall have *Quod ei deforceat* by
the Statute of West. 2. A. 5 E. 3 & M. 9 E. 3.

And if Tenant by Receipt upon the default of Tenant for
life appeareth, and is received, and pleadeth, and afterwards
loseth by Action tried: yet the Tenant for life shall have a
Quod ei deforceat, for the Judgment is given against him by
his default.

And if the Tenant vouch, and the vouchee will not ap- B
pear, for which the Tenant loseth by default of the vouchee,
It is to see whether the Tenant shall have a *Qd. ei deforc'* for
he loseth the Land by the default, although it be not his own
default, for the Statute is, *Et cum temporibus retroactis cum
aliquis amisisset terram suam per defaultam, non habeat aliud re-
cuperare quam per breve de recto*: and there it doth not say,
per defaultam suam, but only by default. But after in the Sta-
tute, it saith, *Provisum sit; quod de cætero non sit eorum defaulta
eis ita præjudicialis*, &c. And by that it seemeth that the Te-
nant ought to make default. But it seemeth that the default
of the vouchee, is the default of the Tenant, and so default
in both: *Quære* of that. But if the Tenant vouch, and the
vouchee appeareth and entreth into the warranty, and after-
wards loseth by default, now if the Tenant lose by the de-
fault of the vouchee, he shall not have a *Qd. ei deforc'*, because
he shall have judgment to recover over in value against the
vouchee, by the default of the vouchee, so as he shall have
recompence. But if the vouchee doth not appear, but maketh
default, then he shall lose the Land by the default of the
vouchee; but that is not the default of the Tenant, and
therefore *Quære* of that case. And

C And if husband and wife lose by default, the Land of the wife which she holdeth for term of life, if the husband dieth, she shall not have a *Quod ei desorceat*, but a *Cui in vita*, for it is a demise made by the husband. And when he bringeth the *Quod ei desorceat*, he counteth that he was seised of the Land in his demesne, as of free-hold, or in his demesne in tail, without shewing of whose lease, or gift he was seised, and he ought to alledge Esplees in himself, &c. and then the defendant ought to deny the right of the demandant, &c. and shew, how that another time he recorded the Land against the demandant, by *Formedon*, or other action, and shall say in end of his plea, *Quod ipse paratus est ad manutenendum jus & titulum suum predict. per donum predict. &c. unde petit judic. &c.* And then the demandant in the *Quod ei desorceat* shall traverse that title, or may shew matter to bar that title, &c. but he shall not make defence, and then plead in bar, as he shall do in the *Formedon*, &c.

S. 48. E. 3. 8.
acc. 2 E. 4.
11. ac.
The Tenant
in the *Quod
ei desorceat*
may plead
any bar as in
other action,
and then the
Demandant
cannot vouch
by the Statute
of West. 2.
cap. 4. But
if he make
his bar by
the first recovery
then he may
33 H. 6. 46.
quod nota.

Writ de Attornato faciendo vel recipiendo.

D **T**HE writ de Attorn^o faciendo or recipiendo lieth, where a man ought to do suit at the County, or at the Hundred, or Wapentake, or other Court, and he would make Attorney for him to appear at the same Court, &c. And if he be in doubt whether the Sheriff will admit such a man for his Attorney which he maketh; then he who would make such Attorney, may sue that writ directed unto the Sheriff, or Bail. of the hundred, commanding them to receive such a man to be attorn^o, for him to appear, &c. and the writ is such:

Rex Vic. &c. Quia per commune consil. regni nostri provis. est quod quilibet liber homo, qui sectam debet ad Com. Tithingum, Hundredum & Wapentagium, libere possit facere Attorn. suum ad sect. suam pro eo faciend. Tibi prae. quod Attorn. quem S. loco suo Attorn. voluer. ad sect. pro eo faciend. ad Com. tuum prae. Tithingum tuum de A. & B. Hundred. de C. & D. Wapentagium tuum de E. & F. loco ipsius S. sine difficultat. ad hoc recipias, Teste, &c.

Otherwise unto a Bailiff of a Hundred, thus:

Rex Ballivis suis de Hundredo 7. Hundred de Cobham & Bray salut. Quia per commun. consil. regni nostri, &c. qui sectam debet ad Hundred. liber possit, &c. vobis prae. quod attorn. &c. ad prae. Hundred. 7. Hund. de Cobham & Bray loco ipsius S. &c.

Otherwise unto the Bailiffs of another Lord.

Rex Balliv. A. de I. salut. Quia per Com. consilium, &c. qui sectam debet ad Curiam dicti domini sui libere possit, &c. vobis

Writ de Attornato faciendo vel recipiendo.

vobis precipimus, &c. ad Curiam dicti domini vestri de I. loco ipsius S. sine difficultate ad hoc recipiat. Teste, &c.

And by that it appeareth, That the Tenant may make Attorney by his Letters Patents to do suit at the Court of his Lord. And if the Tenant by his Letters Patents under his seal make Attorn' for him, to do suit for him at the L. Court, or at the Hundred, and the Bailiffs will not admit of him, &c. then he shall have a writ unto them in this form ;

Rex Ballivis Decani & Capituli Ecclesie beate Mariæ Linc. de C. vel Hund. de S. salut. Quia, &c. (usque ibi) precipimus, quod attorn. quem S. per literas suas patentes loco suo attornar. voluerit ad sectam pro eo faciend. ad Cur. dictorum Decani & Capit. de C. vel ad hundred. præd. Decani & Capituli. de C. loco ipsius S. sine difficultate ad hoc recipiatis hac vice de gratia nostra spec. &c.

And for the Guardian there is another writ thus :

Rex, &c. Vobis mandamus, quod attornat. quem S. custos terra & hered. R. loco suo attornar. voluerit ad sectam pro eo, nomine dicti hered. faciend', &c. loco ipsius custodis sine difficultate ad hoc, &c.

Or thus to the Bailiffs of the King :

[157] *Rex Ballivis suis honoris Peverel in Com. N. salutem. Quia, &c. vobis precipimus, quod attorn. quem S. loco suo attorn. voluerit ad sectam pro eo faciend. ad Curiam nostram honoris præd. in Com. præd. loco ipsius S. recipiatis, &c.*

And if the Lord of any Tenant be in ward to the King for the non-age of his heir, because he holdeth other Lands of him in Capite, &c. and his other Lords will distrain for suit during the time the Lands are in the King's hand, or in the hands of his Committees, Then the King or his Committee shall have a special writ unto the Bailiffs of the other Lords, that they do not distrain the Committee, nor in the Lands, &c. during the time he is in the King's hands, or in the hands of his Committee, and if they have distrained them, that they deliver back the distress again ; and that Writ appeareth in the Register.

And if the King hath any Lands or Tenements in Ward, during the non-age of an Infant, and the King in Chancery, assigns Dower unto the Wife of the Husband who was Father to the Ward of Lands holden of other Lordships; now if the other Lords will distrain the Tenant in Dower for suit at their Court during the time the lands are in the King's hands, the Wife shall have a writ unto the Bailiffs of the other Lords, commanding them that they do not distrain her. And recite in the writ all the special matter ; and

if

if they have taken any distress, that they deliver it back again

If a man make an Attorney to do suit for him at the County, or Hundred, or other Court, and the Bailiffs will not admit him for his Attorney, Or if the Bailiffs do admit him for Attorney, and afterwards discharge him after the year; supposing that he ought not to continue Attorney for the party above one year; Or for any other unreasonable cause they discharge him to be Attorney for the party; then the party may have a special writ directed unto the Bailiffs, &c. commanding them that they receive him for his Attorney, and thereupon he may have an *Alias*, and a *Pluries*, and an *Attachm'* against them returnable in the Common Pleas, or in the King's Bench, if they will not admit him for his Attorney, or return cause upon the *Pluries*, which shall be allowable, wherefore they do not admit him; and the form of the Writ is such :

Rex Ballivis. A. de Hundredo de B. salutem. Ex parte C. nobis est ostensum, quod cum ipse per breve nostrum attornatum suum ad sectam pro eo faciendo ad Hundredum predictum domini vestri de B in eodem Hundredo coram vobis fecisset, & idem attornatus per idem breve ad hoc admissus, sectam illam hactenus fecerit, sicut moris est in regno nostro, vos presumptioni vestrae voluntarie in-nuentes, & causam prætendentes, quod potestas hujusmodi At-tornati ultra An. durare non debet, ipsum C. præd. sectam per Attorn. suum præd. facere non permittitis, in ipsius C. damnum non modicum & gravamen, de quo miramur quam plurimum, & movemur. Et quia virtus brevium nostrorum de hujusmodi attor-nat. faciend. terminum non capit, nec terminus limitatur duran-tibus person. quæ ad hoc requiruntur: Nos ne idem C. vel alii indebite vexentur vel graventur occasione predicta, remedium su-per hoc adhibere volentes: Vobis præcipimus, firmiter injungentes, quod ab hujusmodi voluntariis & indebitis vexationibus & gra-vaminibus eidem C. vel aliis ea occasione de cætero inferend. desistentes, ipsum C. sectam præd. per Attornatum suum præd. sine difficultate qualibet facere permittatis, juxta tenorem prioris brevis nostri vobis inde directi. Et ita vos habeatis in hac parte, quod præd. C. occasione præd. non ponatur in defaulta, nec in aliquo sit perdens, & quod non oporteat nos super hoc amplius sollicitari, per quod manum ad hoc aliter apponere debeamus, Teste &c.

C Note, That the party may make Attorney by the King's Writ directed unto the Bailiffs, commanding them for to receive such person for his Attorney. Or he may have a Writ out of the Chancery directed unto the Bailiffs, or Sheriff to receive any such person for Attorney, that
he

he will present unto the said Bailiffs or Sheriffs to be his Attorney to do his suit; Or he may make Attorney by Letters Patents directed unto the Bailiffs without suing forth any such Writ.

And if a man sue forth a Writ directed unto the Bailiffs to admit one for Attorney to do his suit for him, and the Bailiffs refuse for to admit him; Now the party who sued forth the Writ shall have an *Attachment* against the Bailiffs for that refusal, without suing forth an *Alias* or a *Pluries* directed unto them.

And so the same Law is, if the Tenant by his Letters Patents maketh one Attorney to do his suit for him, and the Sheriff or Bailiff of the Court doth refuse to admit him for his Attorney: Upon that refusal, the party shall have an *Attachment* against the Bailiffs, &c. although he hath not sued forth any writ directed to him before, because they do against the Statute, which requireth, That they admit him for Attorney whom the Tenant will make to be his Attorney.

And he shall have the like writ against the Bailiffs of any other Lord, who refuse to admit an Attorney. to do suit for the Tenant in any Court Baron, and that Writ appeareth in the Register.

*Writ pro Exoneratione Secta ad Curiam
Com. vel Baron.*

THis Writ lyeth where the Tenant holdeth his Land to do suit at the County Court, Hundred, or other Court Baron, or Wapentake or Leet, and he who ought to do the suit is in Ward unto the King, or his Committee, and the Lord of whom he holdeth by such service, will distrain him to do his suit at his Court during the time he is in ward unto the King or his Committee; his Guard' shall sue this writ unto the Sheriff, or Bailiffs of the court, that they do not distrain him, &c. to do the suit during the time he is in ward to the King or his Committee; and the form of the writ is such:

Rex Ballivis A. de I. salutem. Cum secundum legem, &c. non debeamus sectam ad Curiam alicujus facere occasione terrarum & tenementorum quoruncunque in manu nostra, vel in custodia nostra existent. & illi quibus hujusmodi custodias commiserimus custodias illas, durante custodia illa, adeo libere & ab omni secta quiete tenere debeant, ac si nos eas in manu nostra teneremus: Vobis precipimus, quod ratione terrae & tenementorum I. defuncti, qui de vobis tenuit in capite, & quae sunt in custodia ejusdem

eiusdem R. ex concessione nostra non distringatis, vel distring. faciatis, ad faciendum sectam ad Curiam prædict. domini vestri de I. dur. custodia antedicta, & distr. si quam, &c.

And the like Writ shall be for Tenant in Dower, where she is endowed in the Chancery of lands which are in ward to the King, which lands are holden of other Lords, now if the other Lords will distrain the Tenant in Dower, to do suit for those lands which she holdeth in Dower, she shall have a Writ for to discharge her, which is such:

Rex Ballivis A. de B. salutem. Cum secundum legem, &c. (ut supra, usque ibi) existentes, & mulieres terras vel tenementa tenentes in dotem de huiusmodi custodiis, ea adeo libere & ab omni secta quiet. tenere debeant dur. custodiis illis, ac si præd. terras & tenementa in manu nostra teneremus: Vobis præcipimus, quod M. & R. uxor ejus occasione terrarum & tenementorum quæ fuer. H. in E. que de nobis tenuit in capite, & quæ idem K. & M. tenent in dotem ipsius R. de dono prædict. H. quondam viri sui, & de hereditate filii & hered. A. infra ætatem & in custodia nostra existent. non distringatis ad faciend. sectam ad Cur. prædict. domini vestr. durante custodia nostra supradicta, & distr. &c.

And if the heir be in Ward of the King and also his lands, and afterwards the Tenants Paravail who hold of the heir are distrained by other Lords, of whom the heir holds his lands, to do suit unto the Lord's Court, those Tenants shall have a Writ directed unto the Lord's Bailiff, to discharge them of the Suit, and the Writ is such:

Rex Vic. Nott. salutem. Cum secundum legem & consuetudinem regni nostri, nullus qui tenet de hered. infra ætatem & in custodia nostra existent. teneatur ad sectam faciendam ad Com. Hundred. Wapentag. seu alias Cur. pro terris & tenementis ipsorum hered. in manu nostra existent. durant. custod. supradict. Tibi præcipimus, quod Abbat. de Derley tenent. quorundam terrarum & tenementorum Rogeri filii & hered. Roger. Bellers defuncti in Chilwell. qui de Domino Rich. nuper Reg. Angliæ tenuit in Capite, occasione terrarum & tenementorum ejusdem hered. in eadem Vill. in manu nostra ratione minoris ætat. sue existent. non distring. vel distring. facias, ad faciend. sectam ad Wapentagium de B. durante custodia supradicta.

And if the heir and his lands be in the King's Ward, for lands holden of the King in Capite, and afterwards the other Lords of whom the heir holdeth parcel of his lands will distrain for any Service or Rent to them due, then the King or his Committee may sue a Writ for them

to surcease from such distress, and the Writ is such :

Rex Ballivis, &c. Cum hered. infra ætatem & in custodia nostra existentes servitia aliqua durantibus custod. illis facere minime debeant seu teneantur secundum legem & consuetudinem regni nostri, Vobis præcipimus, quod distriction. quam Abbati de W. tenenti hered. Willielmi de W. qui de nobis tenuit in Capite infra ætatem & in custodia nostra existent. pro homag. fidelitat. ac aliis servitiis prædict. hered. præf. Dom. faciend. fac' supersedeatis omnino durante custodia antedicta, & distring. si quam, &c.

And also the Tenant in Dower shall have such Writ if the Bailiff of other Lords will distrain her, for the relief of the heir or other Services during the time that the heir's Lands are in the King's custody, or in the custody of his Committee. And it seemeth that he may sue this Writ directed unto the Lord himself, as well as to the Bailiffs, or unto them both.

Note, that if a Man holdeth of another to do suit to his Mill. &c. if he do not the suit, he shall have a *Sectæ ad Molendinum* against him, and by the same reason, if a Man hold of another Lord to do suit at his Court in the Manor of D. if he do not the suit, the Lord may have a Writ of *Sectæ ad Curiam suam faciend.* as well as the other Writ. But yet there is no such Writ in the Register, because he may distrain for that Suit, and shall not have any other profit but onely appearance in his Court. But in the other Case *de Sectæ ad molendinum*, he shall have other profits by the Suit, the Toll of the Grain he shall grind there, and for that profit it seemeth the action of *Sectæ ad Molendinum* was given, and for the Suit of the Court but only a distress, *tamen Quære.*

Vi. 31 H. 2.
25. 33 H. 6. 7.
Stamford
38. H.

If the King have Lands by Forfeiture or Escheat, and lease them for life, at will, or in tail, and if the Lord of whom the Lands are holden will distrain the King's Committee or Lessee for Suit or other Services, he shall have a special Writ unto the Lord's Bailiffs to surcease, &c.

And if Lands descend unto divers Coparceners, for which one Suit shall be done at the Lord's Court, if parcel of those Lands come into the King's hands, then he shall have a special Writ to discharge him of the Suit for the time they shall be in the King's hands, which shall be such :

Rex vic', &c. salutem. Cum de communi consilio regni nostri, provis. sit, quod si hered. aliqua, de qua unica secta debeat. ad plur. hered. &c. vel ad alios per vendition. &c. devoluta-

tur: unica tum, &c. fieri consuevit, ac quedam hereditas, que fuit H. de B. de Baronia de B. de qua quidem Baronia unica secta tantum ad Com. tuum predict. debet ad dilect. & fidel. nostrum W. de H. & I. fil. & hered. R. de S. infra etat. & in custod. dilect. & fidel. nostri R. de N. ex commissione nostra existens per venditionem sit devoluta. ut accepimus: Nosque secundum legem & cons. &c. non debeamus sectam aliquam facere occasione terr. & tenement. in manu nostra, & in custod. nostra exist. & illi quibus huiusmodi cust. commiserim, illas adeo libere & ab omni secta quiete teneri debeant, sicut nos ea in manu nostra teneremus: Tibi preac. quod si ita est, tunc non distr. pred. W. de H. ad fac. sect. ad com. tuum pred. pro terr. & tenement. de Baronia pred. dar. custod. dicti heredis supradict., &c.

And if the wife be Tenant in Dower of any Land, she shall not be distrained to do Suit for that Land which she holdeth in Dower, if the heir have sufficient Land in the same Country to be distrained for the same. And if she be distrained, then she shall have such Writ:

B Rex Balliv. hundred. de N. salutem, &c. Cum secundum legem & consuetud. regni nostri mulieres tenentes in dotem, pro terris & tenementis suis, quas tenent in dotem, sect. ad hundr. vel cur. alicujus facere non debeant. Vobis precipimus, quod A. que fuit uxor B. ad faciend. sectam ad hundr. predict. pro terris & tenementis q. tenet in dotem & libero tenemento quod fuit pred. quond. viri sui, contra legem & consuetudinem regni nostri non distringatis, dummod. hered. pred. B. alias terr. & tenementa in balliva tua habet, per que distringi valeat ad sectam illam pro pred. dote faciend. & district. si quam fecer. &c. eam sine dilatione liberari facias, &c.

C And if lands descend to many Coparceners, whereof one Suit ought to be done for the whole land; now if the land be holden of the King, then all the Coparceners ought to do the Suit as well after partition as before: But if the land be holden of another Lord, then that Coparcener or his Feoffee who hath the part of the eldest sister shall only do the Suit, and the Lord will distrain the other Coparceners, then they shall have a Writ against him directed to him or his Bailiffs to discharge them of that Suit, and distress taken, &c. and the Writ shall be such:

Rex C. vel ball. C. salutem, &c. Cum de communi, &c. provisum sit, quod si hereditas aliqua, de qua unica secta tant. debeat ad plur. hered. participes ejusd. hered. vel al. per vend. seu alio modo devolvatur, unica tant. fiat secta pro hereditate illa, sicut prius fieri consuevit, ac quedam hered. que fuit A. in N. pro qua unica sect. tam debet ad cur. tuam de I. vel ad cur.

Writ pro Exoneratione Sectæ ad

cur. prædict. domini vestri de I. ad A. B. & C. cum hered. & participes hered. prædict. sit devoluta ut accepimus: Tibi vel vobis præcipimus, quod non distringas vel distringatis, prædict. A. B. & C. ad diversas sect. pro portionibus suis hered. præd. separatim faciend. ad curiam tuam de I. vel ad cur. præd. domini vestri de I. contra form. provis. prædict. & distinctionem si quam, &c.

o. b. l. b.

And if the Tenant enfeoff divers persons of lands for D which one ought to be done, if one of the Feoffees do the suit, &c. if the other Feoffees are distrained to do suit for that land, they shall have such Writ, which Writ is in the Register, and that Writ is given by the Statute of *Marlebridge*, cap. 9.

And so if the heirs or Feoffees shall do the Suit at the County, Hundred, or Wapentake, if one do the suit, all of them are discharged, and if they be distrained, they shall have that Writ.

And so if one Coparcener maketh a Feoffment of his part, or a Man be Tenant by the Courtesie of one part of the land, yet one Suit shall be only done by one Coparcener by him who hath the eldest part. And if they be joynt Feoffees, then by one of them, as they can agree amongst themselves, &c. And if he sue such Writ, and he be distrained, then he shall have an Attachment against the Lord, or the Bailiffs to whom the first Writ was directed, to answer that contempt, in which Writ he shall recover his damages, &c.

But if there be two Coparceners of land, for which one E suit ought to be done, and the eldest sister will not do the suit at the Lord's Court, then the Lord may distrain the other Coparcener as well as the eldest Coparcener for that Suit, and if the Coparceners be distrained, then they shall have a VVrit against the eldest sister to compel her to do the Suit, and the VVrit shall be such:

*Rex Vic', &c. Si B. & C. fecerit, &c. tunc sum. &c. A. qd. sit, &c. ostens. quare cum de communi, &c. quod si hered. aliqua, &c. (usque ibi) consuevit, & quod illa que habet en-
tiam partem, &c. ac quedam hered. &c. (usque ibi) sit de-
voluta, ut accepimus, & prædict. A. habet partem hered. illius.
Et præfat. B. & C. parat. sunt contribuer. pro portionibus suis
ad sectam illam faciend. Idem A. sectam illam pro se & præ-
fat. B. & C. cur. præd. facere contradicit, ad grave damnum
ipsarum B. & C. & contra form. provis. præd. ut dic. & ha-
beas ibi sum. &c.*

And

- A** And if a Man have lands in divers places in the County, and hath several Leets, &c. or Hundreds, and he is constrained to come unto the Leet or the Sheriffs Tourn, where he is not dwelling or conversant, but is dwelling within the precinct of any other Leet or Hundred, &c. Then he shall have a Writ unto the Sheriff, for discharging him from coming to the Sheriffs Tourn, or Hundred or Leet, or other place, than in the Leet or Precinct of the Hundred where he dwelleth; and the Writ is such:

Rex Vic. Wigorn. salutem. Cum de communi consilio regni nostri provis. sit quod si qui in diversis hundred. habeant tenementa, non habeant necesse venire ad turnum vic. nisi in ball. ubi fuerint conversantes: Tibi precipimus, quod non distring. S. ad veniend. ad turnum tuum in hundredo nostro de I. contra form. provis. predict. &c.

And look the Statute of Marlebridge, cap. 10. By which it appeareth, that the Sheriff ought for to hold his Tourn as he hath used in the time of Rich. the first, and John, Kings of England.

And by the Writs it seemeth, that he shall hold his Tourns in every Hundred, &c. And if the Sheriff distrain against that Statute any Man, then he may sue that Writ upon the Statute, &c. and if he do distrain him after, then he shall have attachment against the Sheriff, &c. And the Writ is such:

Rex Coronatoribus suis in com. Lincoln. salut. Si A. fecerit, &c. tunc ponite, &c. B. Vic. nostrum com. prad. quod sit, &c. ostens. quare cum de communi consilio, &c. (usque ibi,) conversant, idem B. vel idem Vic. distrinxit pref. A. ad veniend. ad turn. ipsius Vic. de hundred. nostro de I. contra form. provis. predict. & contra form. mandati nostri prius ei inde direct. ut dic. & habeatis, &c. Et averia ipsius A. ea occasione capta interim de liberari faciat. Teste, &c.

- B** And if a Man have lands within the Precinct of several Leets, or in one County, and he dwelleth within the Precinct of one of them, and he is distrained to come unto another Leet where he dwelleth not, then he shall have such Writ unto the Sheriff, or Bailiffs of the Court, &c. that they do not distrain him to come to that Leet, within the Precinct whereof he dwelleth not, and the Writ is such:

Rex, ball. suis honoris de C. in com. Lincoln. vel, ball. A. de B. in com. &c. salut. Cum de communi consilio, &c. si qui in divers. hundred. &c. non habeant necesse venire ad visum franc. legiti, nisi in ball. ubi fuer conversant: Vobis prac. quod non

Writ pro Exoneratione Sectæ ad

distringat. ad veniend. ad visum franciplegii in cur. vestra, vel in cur. domini vri. honor. prædict. in com. prædict. cont. form. &c. & distriction. si quam, &c.

And it appeareth that if the party be distrained, after that he hath sued the Writ directed unto the Sheriff, or Bailiffs, that they do not distrain him: That he shall have an Attachment against them: But it seems reasonable, that first he have an Attachment against the Sheriff, or against the Bailiffs, who distrained him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the Precinct of another Leet, because the Statute of Marlebridge is a prohibition in it self, and he who doth contrary to the Statute doth wrong unto the party, upon which he may have an Attachment, without suing forth any Writ.

Note, that men or women who have entred into Religion, ought not to come unto the Sheriff's Torn, or unto the Leet of any other without great cause; and if they be distrained for to come, they may have a Writ out of the Chancery to discharge them, which shall be such:

Rex Vic. &c. Cum de communi consilio, &c. quod viri religiosi non habeant necesse venire ad turnum vic. &c. Vel sic; ad visum franciplegii, nisi eorum presentia ob aliquam causam specialiter exigatur: Tibi præcipimus, quod non distring. Abbat. de I. ad veniend. ad turnum tuum: Vel sic; ad visum franciplegii, in hundred. vestro de F. contra form. provisionis prædict. & districtionem, &c.

And the Abbat shall have such a Writ unto the Bailiffs of another Lord, that they do not distrain him to come to his Leet.

And by the Common Law, Parsons of Churches shall not be compelled or distrained to come to the King's Leets, or to the Leets of other Lords of the Lands annexed to their Churches, and if they be distrained so to do, they shall have such Writ:

Rex Vic. &c. Cum secundum consuetudinem regni nostri persone Ecclesiast. ratione terr. & tenementor. suor. Eccles. suis annex. venire non debeant ad visum francipleg. in cur. nostra vel aliorum quorumcunque: Tibi præcip. quod C. personam Eccles. de I. ratione terr. & tenement. suorum Eccles. præd. annexorum, ad veniend. ad visum francipleg. in hundred. de N. non distringas contra consuet. præd. & districtionem, &c.

And Clarks who are not Parsons, nor have Benefices, shall not be distrained or compelled to come to Torns or Leets, but they shall have a Writ to discharge them, thus:

Rex

Rex Vic', &c. Cum personæ Ecclesiast. non habeant necesse venir. ad turn. vic. vel ad visum franc. pleg. nisi eorum present. ob aliquam causam specialiter exigatur juxta form. provisionis de communi consilio regni nostri in consimili casu pro viris religios. factæ, ideo tibi præcipim. quod non distring. S. personam Eccles. de N. vel capellanum, ad ventend. ad turn. tuum vel ad visum franc. pleg. nostri in hund. de I. cont. form. provis. præd. & district', &c.

And women are not compellable nor distrainable to come unto the Sheriffs Torns, nor to Leets, and if they be distrained they may sue such a Writ as a Priest may sue, and thereupon an *Alias*, a *Pluries*, and *Attachmenr*, &c. And because that women are not sworn in Leets as men who are of the age of twelve years or more are; It is said, That when a woman is outlawed; that she is *Wayve*, and not *Outlawed*; for she was never sworn to the Law, &c. But a man is said outlawed, because he was sworn to the Law; and now for his Contumacy he is put from the Law, and said outlawed, as it were *Extra legem positus*; and a woman is not so, for she was never sworn to the Law.

B And by the Rule of the Register, two women may sue that Writ unto the Sheriffs or Bailiffs of the Leet, that they do not distrain them to come to the Torn or Leet, &c.

C And if the Sheriff will distrain the Tenants in ancient demesne to come unto the Leet or Sheriffs Torn, they may have one Writ for them all directed unto the Sheriff, commanding him that he do not distrain them, &c. to do any suit at the Leet or Torn; and that Writ shall be sued in all their names if they will, as a *Monstraverunt* shall be sued: Or any of them may sue the Writ in his own name if he be distrained to do such Suit; and the Writ is such:

See before
14 good Cases for their Privilegs.

Rex Vic', &c. *Monstraverunt nobis homines de manerio de D. quod. est de antiquo Dominico Corone Angli. quod cum ipsi ad Torn. Vic. seu ad visum franc. pleg. extra libertatem maner. pd. venire non debeant nisi ipse vel eorum antecessor homines & tenentes de eodem manerio venir. consueverunt a temporibus retroactis, tu nihilominus homines nostros præd. ad veniend. ad Torn. in K. vel ad visum franc. pleg. in hundr. nostro de K. cont. consuet. in eodem manerio hæcenus usitatam gravit. distringis & ipsos multiplici. ea occasione inquietas minus juste in ipsorum hominum & tenentium præjudicium manifestum & gravamen. Et quia præd. hominibus & tenentibus nolumus injuriari. Tibi præcipimus, quod si ita est, tunc ab hujusm. districtionibus eis ex causa prædict. de cætero infarend. penit. desistas, & ipsos consuetudinibus suis, quibus hæcenus rationalibit. usi sunt absque*

impedimento seu calumnia uti permittas & gauder. ne querela ad nos veniat iterata. Teste, &c.

And if the Sheriff will distrain a Man to do suit to the Hundred or Wapentake twice in the year to do things appertaining to that Leet, Then he shall have a Writ upon the Statute of *Magna Charta* directed to the Sheriff, which shall be thus :

Rex Ball suis de Wapentak. de R. sal. Cum in Magna Charta de libertatibus Angl. contineat. quod nullus Vic. vel Ball. suis fac. turn. suum. per hund. nisi bis in anno & non nisi in loco debito & consueto, viz. semel post Pasch. & iterum post festum S. Michael. ac jam ex querel hominum & tenentium Abbat. de C. accepimus, quod vos ipsos homines & tenent. in hac part. pergravar. machinantes, ipsos ad veniend. ad quodlibet Wapentag. nostrum præd. ad presentand. ibidem, ea q. ad visum franc. pleg. pertinet jam de novo gravit. distringetis, in ipsorum hominum & tenentium grave damnum & præjudicium manifestum, & contra tenorem Magn. Chart. præd. nos eand. chart. in omnibus inviolabiliter observare volent. vobis præcipimus, quod dictos homines & tenentes ad veniend. coram vobis ad Wapentagium præd. ad presentand. ea q. ad visum franc. pleg. pertineat contra tenorem Chartæ præd. nullatenus distring. & distractionem, si quam, &c.

And by that it appeareth, That he shall not distrain to come to the Hundred to present a thing appertaining to the Leet but twice in the year ; But to do suit at the Hundred, to do that which appertaineth to the Hundred Court, he may distrain them several times to do the Suit, and they shall have no remedy, because Suit at the Hundred is from three weeks to three weeks.

Writ de Quarentia habenda.

THe Writ of *Quarentina habenda* lieth, where a man dieth E
 seised of any Mesuage and Lands, &c. and immediately after the death of the Husband, the heir or he who ought to have the lands after his death will put the wife out of the Mesuage, &c. Then the wife shall have this Writ ; for by the Statute of *Magna Charta*, cap. 7. the wife shall remain in the Capital Mesuage after the death of her Husband by forty days, if it be not a Castle ; And that Writ is *Viscontiel*, and shall be directed unto the Sheriff, and he shall hold Plea thereof, and the Writ is such :

Rex Vic', &c. vel ballivis suis S. salutem. Ex querel. B. que fuit uxor D. accepimus, quod cum in Magna Charta de libertatibus Angl. contineatur, quod vidue maneant in capitali Mesuag.

suag. maritorum suorum per quadragint. dies post obitum maritorum suorum præd. nisi mesuagia illa castra sunt; infra quod tempus dotes sue assignentur eisdem, & quod interim habeant rationabilia estoveria de bonis eorund. I. de C. ipsum B. statim post mortem prædict. viri sui de Capitali mesu. quod fuit ejusdem D. in H. licet castrum non sit, nec dos ei assign. fuer. violenter ejecis & ipsam estoverium suum de bonis eorund. com. percipere non permitt. in ipsius B. damnum non modic. & gravamen, & cont. tenor. Chartæ prædict. Et quia præf. B. injuriari nolumus in hac parte, vobis mandamus, quod vocatis coram vobis partib. præd. & auditis hinc inde eorum rationibus, eidem B. plenam & celerem justitiam inde fieri faciatis juxta tenorem Chart. præd. ne pro defectu justitiæ querela ad nos venerit iterata. Teste, &c.

Quare, if an Infant may keep the Possession during the time of Quarentine by force of the Statute of 8 H. 6. 4. & 5 Ma. Dyer 161.

A And upon that Writ the Sheriff shall award Process against the party to come, and answer the same: and shall not stay until the County Court be holden; for this Writ is a Commission unto him, and upon the same he shall immediately make process against the party for to answer, &c. within two or three days according to his discretion, and thereupon to proceed as Justices shall do upon a Commission of Oyer and Terminer, &c.

Nota by Newton. The woman shall not have meat and drink, For the Statute doth not extend

to it. But Fitzherbert in Abridging the Case Quares, if she may not kill things for her provision, if there be not any provision in the house.

Writ of Contribution.

B THE Writ of Contribution lieth where there are Tenants in Common, or who joyntly hold a Mill pro indiviso, and take the profits equally, and the Mill falleth into decay, and one of them will not repair the Mill; Now the other shall have a Writ to compell him for to be contributory to the Reparations, and the Writ is such:

Rex Vic', &c. Si A. fecerit, &c. tunc summ', &c. B. & C. quod sint apud W. &c. ostens. quare cum iidem A. B. & C. quoddam molendium in N. pro indiviso teneantur, & ipsi exitus inde provenient. pro equali portione percipiant, & ad reparationem & sustentac. ejusdem molendini teneantur, ac iidem B. & C. licet proportionem de exit. illis ipsos contingen. percipiant, reparationi & sustentationi prædict. molendini contribuere contradicunt, in ipsius A. damnum non modicum, & gravam. ut dicit, & habeas ibi sum. & hoc breve.

And if there be three or four Coparceners of Lands, and the eldest Sister do the suit to the Lord of whom the Lands are

are holden for all the Coparceners, and the others will not allow her for her charges and losses according to the rate from the same suit; That Coparcener who did the suit may have this Writ of Contribution; and the Writ is such:

Rex Vic', &c. Si B. fecerit, &c. tunc summ. A. & I. uxorem ejus, & R. & F. uxorem ejus quod sint coram Justic. &c. ostens. quare cum de com. consilio, &c. quod si hereditas aliqua, &c. (ut supra usque ibi.) & ille qui habet enitiam partem hereditatis illius, sectam illam faciat pro se & participibus suis ejusdem hereditatis & quod iidem participes contribuant ad sect. illam faciend. ac quedam hered. que fuit C. in R. qua unica secta ad hundred. l. de N. tantum debetur, ad ipsum B. & pred. A. I. R. & F. particip. hereditatis predict. sit devoluta, ut accipimus, & predict. B. qui habet enitiam partem hereditatis illius, sectam illam fac. ad hund. pred. vel ad cur. pred. A. I. R. & F. particip. suis iidem A. I. R. & F. ad sectam illam faciend. contribuer. contradicunt, ad grave damnum ipsius B. & cont. formam provisionis pred. ut dicit, & habeas, &c.

And if there be many Coparceners, and the eldest do the suit, and the other Coparceners agree with the eldest for a Rate; now the Writ of Contribution shall be brought against the others, who would not contribute, &c. And if many be infeoffed of land, for which one suit ought to be done, &c. Now if they agree among themselves, that one of them shall do the suit, and that the others shall contribute unto him, if he do the suit, and afterwards the others will not allow him for that suit according to their rate, Then he shall have the writ of Contribution against them, and the writ shall mention the agreement, &c. and if they cannot agree, then the Lord shall distrain them all for all their suits, if the suit be not done; But if one Feoffee of his own will do the suit for them all, without any agreement for the same made between them, The Lord cannot then distrain the others for the suit; for as to the Lord it is not material whether there be any agreement between them or not; but between the Feoffees he that did the suit shall not have the Writ of Contribution against his Companions, with agreement thereof made betwixt them. But if one joynt Tenant do make a Feoffment in Fee of his part, his Feoffee shall do a several suit by himself. But the other Joyntenants shall do but one suit by the Statute of *Marlebridge*, cap. 9. But every Tenant in Common shall do several services and several suits. And the Procefs in this writ is Summons, Attachment and Distress.

Writ de Contra formam Feoffamenti.

E **T**HE Writ *de Contra formam Feoffamenti* lieth, where a man doth Enfeoff another before the Statute of *Quia emptores terrarum*, to hold of him by Homage, Fealty, and Rent by deed, and afterwards he will distrain for suit or other services to be done unto him; He who was infeoffed, or his heir, shall have this Writ of *Contra formam Feoffamenti*, &c.

1. 5 E. 4. 85.
Br. cont. fol.
mam Feot-
famenti.

F And this Writ may be directed unto the Lord himself, or unto his Bailiffs, commanding them that they do not strain him against the form of his grant; and this Writ is a prohibition in it self. And if the Lord and Bailiffs do contrary to the Writs sent to them, The Tenant thereupon shall have an Attachment, and a Distress; and the form of the Writ is such:

B *Rex I. vel ballivus I. salutem, Cum de Communi, &c. provisum sit, ne qui occasione tenementor. suor. distringantur ad sectam faciendam ad curiam dominorum suorum, nisi per formam feoffamenti sui ad sectam illam specialit. tenent. aut ipsi vel eorum antecessores tenement. illa tenent. eam facere consuever. ante prim. transfretation. Domini Hen. Regis in Britan. Tibi vel vobis precipimus, quod non distringas vel distringatis A. ad faciend. sectam ad Curiam tuam de I. vel ad Curiam predict. Domini vestr. de N. contra formam provision. predict. & districti. on. &c.*

And no person shall have this Writ of *Contra formam Feoffamenti*, but he who was enfeoffed, or his heirs who are privies to the deed; But if the Feoffee to whom the Lands were given to hold of the Feoffor, and his heirs by the deed make a Feoffment over to hold of the chief Lord, &c. The Feoffee shall not have this writ *de contra formam Feoffamenti*, because he is not party or privy to the deed, but he shall rebut the Lord by that deed, to claim other services than are mentioned in the deed. And that Writ is a prohibition unto the Lord and his Bailiffs; and if he distrain after the Writ delivered to him, the Tenant shall have an Attachment against him, and thereupon he shall recover his damages if it be found for him, &c. and the parties Prohibition, Attachment and Distress.

And the Rule in the Register is: *If any for suits undue against the form of any Statute, to the Court of any to be done be distrained, he may have a Prohibition against the distrainer, and after an Attachment if need be: And afterwards Attachment,*

ment, nor can be Attached, unless a Prohibition be first directed unto him.

And the opinion of *Parning* is *P. 10. E. 3.* That if a man give Land in Frankmarriage, or in Frankalmoign, that the Donor shall not have a Writ of *Contra formam Feoffamenti*; nor his heirs, because there are not any services expressed in the deed, for which reason he is out of the Statute of *Marlebridge. cap. 9.* but they may rebut the Lord by such deed.

And if the Lord confirm the estate of the Tenant to hold by lesser services, &c. the Tenant shall have a Writ of *Contra formam Feoffamenti*; if he be distrained for more services than there are specified in the deed of Confirmation. *M. 16 E. 3. Avowry 243.*

And in a *Contra formam Feoffamenti*, the person did count H upon the deed, and the Distrainer demanded over thereof, and could not have it. *M 3. E. 2. Acon sur le Case 5.*

And the *Contra formam Feoffamenti* lieth only against the Feoffor and his Heirs.

Writ de Coronatore eligendo vel exonerando.

4 E. 4. 44.

THE Writ de Coronatore eligendo lieth, where a man who K is Coroner of any County dieth, or be discharged of his Office, then that Writ shall be awarded unto the Sheriff, that he in full County by the Freeholders of the County choose another in his place, and to certify the Election, and his name who is chosen in the Chancery.

And in Every County commonly there are four Coron- L ners, and in some Counties six Coroners, and in some Counties less as the usage is; and if any of them dieth, or is discharged, then shall issue such Writ:

Rex Vic, &c. Quia L. nuper unus Coronatorum nostrorum in M com. tuo diem clausit extremum, ut accepimus: Tibi precipimus, quod si ita est, tunc in pleno com. tuo de assensu ejusdem com. loco ipsius L. eligi fac. unum alium Coronatorem juxta formam statuti inde edit. Et provisi, qui prestitio sacrament. prout moris est, ex tunc ea fac. Et conservet, que ad officium Coronatoris pertinent in com. predict. Et talem eum eligi fac. quo melius sci at Et possit officio illi intendere, Et nomen ejus nobis scire fac. Teste, &c.

And now it appeareth by the Writ, that upon Election made, the Sheriff shall give him his Oath duly to execute his Office, *Vi. Stat. West. 1. cap. 10.*

And the Coroner shall be discharged of his Office by the N King's Writ sent unto him, and thereupon shall issue another Writ

Writ directed unto the Sheriff to choose a new Coroner, and that Writ shall recite the cause of the discharge of the other Coroner; and the Writ shall be such :

Rex Vic. &c. Quia R. unus Coronatorum nostrorum com. tui divers. negotiis nostris in com. tuo faciend. ita occupat. est quod ea que ad officia Coronatoris in eodem com. pertinent exercend. vacare non potest, ut pro certo intelleximus, ipsum ab officio illo amovimus : Tibi precipimus, quod unum alium Coronatorum, &c. ut supra vel sic : Quia ex testimonio accepimus fide digno, W. T. unus Coronatorum nostrorum com. tui adeo languidus est, & senio confectus, quod ad ea, &c. exercend. non sufficit, ipsum W. duximus ab officio illo removend. Et ideo tibi precipimus, &c. Vel sic : Quia W. unus Coronat. &c. minus idoneus est ad offic. illud exequend. sicut ex relat, &c. Vel sic : Quia accepimus, quod W. in coronat. com. predict. nuper elect. terr. vel tenementa in eodem com. non habet, in quibus juxta statum suum morari possit pro predict. offic. exercend. Tibi prece. &c. Vel sic : Quia A. unus coronat. &c. morbo paralytis percuss. &c. Vel, quia ex extremis partibus totius com. morat. per quod ea que ad offic. &c. commode exercere non potest. Vel, Quia in officium vic. com. predict. est electus, Vel, in viridar. foresta nostr. de S. electus extitit per quod, &c. Vel, Quia non habet centum sol. terre, ut dic. Vel, Quia non est miles, &c.

L. 5 E. 4. Ac. by our Judg. Coroner shall not be discharged by demise of the King. because he is made by Writ contr. of others, who are by commission. 4 E. 4. 44.

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But it seemeth that at this day this last clause is not cause for to remove the Coroner: for if he have sufficient Lands within the County, it sufficeth, although he be not a Knight, notwithstanding the Statute which requireth that he be a Knight. For those words are put into the Statute, to the intent that he should have sufficient within the County, and for no other cause. And it seemeth the King by his Writ may command the Sheriff to choose two or three Coroners, if there want so many in the County.

And if the Sheriff choose one to be Bailiff of the Hundred or Wapentake: or if the Lord of a Liberty choose one to be Bailiff of the Liberty, who hath not sufficient Land within the County, according to the Stat. of West. 2. (but see the Stat. of 2 E. 3. cap. 4. thereof) then a Writ shall be sent to the Sheriff for to discharge such Bailiff, and to choose another in his place, and upon that a man may have an *Alias*, and *Pluries*, and Attachment against the Sheriff, if that he do not according to the Writ; and the Writ is such :

Rex Vic. &c. Cum in Statuto apud Westmin. nuper edit. contineatur, quod nullus sit vic. vel ball. libertatis Wapentag. hundred. nec tithingi, nisi habeat terras & tenementa suffic. in eodem

Writ de Electione Viridariorum Forestæ.

eodem Comitatu, unde nobis seu populo nostro in hac parte respondere possit, si quis super eum conqueri voluerit, jamque intelleximus, quod W. de T. qui terras seu tenementa in eodem Comitatu non habet, ball. wapentagii nostri de B. fecisti, in nostri contemptum, & populi nostri in hac parte damnum non modicum & gravamen, & contra formam Statuti prædicti. Et ideo tibi præcip. quod si ita est, tunc ipsum W. a ball. præd. sine dilatione amoveri facias, & alium loco suo competentem constitui vel ordinari fac. juxta formam Statuti præd. Teste, &c.

Writ de Electione Viridariorum Forestæ.

THE Writ of Election of the Verderors of the Forest, lieth, where any of the Verderors are dead, or removed from their Offices, &c. Then the King shall send a Writ to choose another in his place, and it shall be directed to the Sheriff, and is such :

Rex Vic', &c. Quia A. nuper unus viridar. nostrorum forestæ nostr. mortuus est, ut accepimus: ideo tibi præcipimus, quod si ita est, tunc in pleno com. tuo de assensu ejusdem comit. loco prædicti. A. eligi facias unum alium viridarium, qui præstito sacramento prout moris est, ex tunc ea faceret & conservaret quæ ad officium viridarii pertinent in foresta prædicta, &c.

And by that it appeareth, that the Verderor shall be chosen in the same manner as the Coroner of the County shall be chosen by the Freeholders of the County.

And if a Coroner or Verderor be discharged of his Office by false suggestion by the King's Writ directed to the Sheriff, then the party may come into the Chancery, and require a Commission to enquire of the said false suggestion, and to return the enquiry before the King into the Chancery; or the Justices of the Forest may certifie the King of the false suggestion under their Seals; and if it be found to be false, then the King may make a *Superfedeas* to the Sheriff, that he do not remove the Verderor, if, &c. And if he be removed that he suffer him to exercise his Office as he did before, and the Writ is such :

Rex Vic. &c. Licet nobis sugg. in cancellar nostra, quod A. unus viridariorum in foresta nostra de S. non habuit terras seu tenementa infra limites forestæ prædictæ. nec infra forestam præd. morabatur: tibi præcip. quod si ita est, tunc in pleno Com. tuo de assens. ejusd. com loco prædicti. A. eligi faceres unum alium viridar. qui præstit. sacramento, prout moris est, ex tunc ea fac. & conserv. quæ ad offic. virid. pertin. in foresta præd. quia tamen testificat. est, coram nobis in cart. nostra per dilect. & fidel. I.

de

de S. Justic. nostr. ultra Trentam, quod idem A. terr. & tenementa habet sufficient. infra forestam prædict. & idon. & sufficient. existit pro officio supradict. Nos nolentes ipsum A. ab officio illo occasione hujus falsæ sugg. amoveri: Tibi præcip. quod execut. brevis nostr. præ occasione falsæ sugg. præ tibi direct. supersed. omnino, & præfat. A. offic. illud exercere permittas, sicut hæcenus fieri consuevit. Teste, &c.

Writ for the Election of the Clark to take Obligation upon Statutes Merchant.

E THE Writ for the Election of the Clerk assigned to take and make Obligation thereof by Statute Merchant lieth where the Clerk who is assigned to take such Obligation, dwelleth in another place, or is busied in other affairs that he cannot intend or follow the Office, or that he hath not sufficient Lands, &c. to answer for his misdoing, then upon a Surmise made in the Chancery, such Writ shall be made directed unto the Mayor or Bailiff to discharge him, and to choose another: and the Writ is such, viz.

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Rex ballivis & probis hominibus vill. de H. salutem. Quia ex relatu accipimus plurimorum qd. B. qui custod. majoris peciæ sigilli juxta formam Statuti de Acton Burnell in villa præd. accipiend. deputat. jam habet, in villa præd. moram non facit per qd. ad ea quæ ad officium suum pertin. in hac parte faciend. intendere non potest, in mercatorum & aliorum ad dict. vill. confluent. dispend. non modic. & gravamen: Vobis mandamus, qd. si ita est, tunc loco ipsius R. eligi fac. unum alium homin. de vill. præd. qui ad illam custod. pertin. faciend. melius sciat & possit intendere, & nos de nomine illius quem sic elegeritis, communi sigill. vestro distincte & aperte sine dilatione reddatis certiores, hoc breve nobis remittentes. Teste, &c.

And it appeareth by the Statute de Mercatoribus, That the King shall make the Clark, and by it appeareth, That the Mayor or Bailiffs shall choose the Clark, &c. but it seemeth that Writ is granted ex gratia Regis. For he might send a Writ of discharge unto the Clark, and make a new Clark (as it seemeth) at his pleasure.

Writ

Writ de non ponendis in Assis & Juratis.

29 E. 3. 15.
One was
chosen by
Knights in
a Writ of
Right upon
the Grand
Assise, and
after he
shewed a
Charter of
Exception
De non po-
nen- &c.
and it was
not allow-
ed, the same
sue in At-
taint.

THE Writ *De non ponendis in Assis & Juratis* is ground-
ed upon the Stat. of *West. 2. cap 38.* and upon the
Statute of *Articuli super Chartas, cap 9.* which Statutes de-
clare what persons the Sheriff ought for to Empannel, and
what number he ought to Empannel in Juries and Inquests,
and the Writs declare the Effects of the Statues; and the
Writ shall be such:

Rex Vic', &c. Cum inter ceteros Articulos quos dominus E. quondam Rex Angl. &c. ad emendand status populi regni sui ordinavit, concessum sit, quod nullus Vic. ballivus ponat in inquisitione, nec jurat. plures homines, nec alios, nec alio modo quam ordinat. est per statutum, & quod ponant in inquisitionibus & juratis hujusmodi homines magis propinquos, magis sufficient. & minus suspectos: Et qui secus fecerit, & inde convict. fuerit, reddat querenti damna sua in duplum, & sit in gravi miseria nostra: Tibi precipimus, quod in jurata 24 Militum quam H. T. de K. arrainavit coram, &c. per breve nostrum versus W. F. ad convincend. Juratores ass. novae discessine, quae inter ipsum W. & praef. H. T. & alios in brevi nostro originali content. sum fuit & capta apud E. per breve nostrum coram nobis de tenementis in C. homines vicinet. illius magis propinquos, magis suffic. & minus suspect. per quos rei veritas melius sciri poterit & inquiri, poni fac. juxta formam Articulorum praed. & hoc nullatenus omittas.

And by this Writ it appeareth: When a man sueth an
Assise of Attaint, or such Actions, in which are Jurors at
the first day, &c. That he may also sue this Writ directed
to the Sheriff, that he return the Pannel according to the
Statute; And if the Sheriff do not accordingly, then it
seemeth the party shall have an Attachment against the
Sheriff. And this Writ may be sued as well by the Defen-
dant as by the Plaintiff or Demandant, and also although
that the party do not sue forth the Writ, yet if the Sheriff
or Bailiff of the Liberty return a Pannel against the form
of the Statute, the Party Defendant or Plaintiff may have
an Action upon the Statute against the Sheriff, &c. because
the Statute is a Prohibition in it self; and the form of the
Writ of Attachment upon the same is such:

Rex Coronatoribus suis in Com. Linc. &c. Ponite per vadios. &c. B. Vic. nostrum com. praedict. quod sit ostensur. quare cum inter ceteros Articulos, &c. (usque ibi.) in gravi misericordia nostra, & nos nuper ad prosecutionem H. assentis quandam inquisi-

inquisitionem capi deber. coram Justic. nostris præd. de loquela, quæ fuit coram eisdem Justic. per breve nostrum int. R. petentem & T. tenentem de manerio de S. cum pertin. præcepimus præfat. Vic. quod in inquisit. illa homines magis propinq. magis sufficient. & minus suspectos poneret, juxta formam Statuti & Articulorum præd. idem Vic. in eadem inquisitione homines magis remotos, minus suffic. & magis suspectos posuit, contra formam eorundem Statuti & Articulorum, ac contra tenorem mandati nostri præd. ut dic. & habeas, &c.

D And by the Statute of *West. 2.* aforesaid, The Sheriff ought not to empanel men who are sick or decrepit. nor Men who at the time of the Summons were not dwelling within the County, nor Men above the age of Threescore and ten years, &c. and if he do, then he, or those who are empanelled by the Sheriff may sue this Writ unto the Sheriff, commanding him that he do not empanel them, &c.

And Barons who are Lords shall not be empanelled upon Inquests nor Assises, &c. if their presence be not necessary, but they shall have a Writ unto the Sheriff to discharge them, thus:

E *Rex Vic', &c. Quia Barones regni nostri in Assis, Juratis, seu Recognitionibus aliquibus poni consuever. ut dicunt, nisi eorum sacramentum adeo sit necessarium, quod sine illis veritas inquiri non possit: Tibi præcipimus, quod dilectum & fidelem nostrum A. in Assis, Juratis seu Recognitionibus aliquibus non ponas seu poni facias contra voluntatem suam, sine mandato nostro speciali, nisi sua præsent. ob aliquam causam specialiter exigatur. Teste, &c.*

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But if the Sheriff hath returned any Lord in Juries or Assises, &c. then he ought to bring a Writ unto the Justices, reciting that he is a Peer of the Realm, commanding them for to discharge him, otherwise he shall be sworn, and if he do not appear, he shall lose issue, &c.

A There are also other Writs for those who are sick, or past 70 years of age, or those who are not dwelling in the County, and the Writ is such:

Rex Vic', &c. Cum de com. consilio, &c. provisum sit, quod homines perpetuo languidi. Vel sic, Quod homines tempor. sum. Vic. in patria non commorantes. Vel sic, Quod homines ætatem lxx. annorum exceden. non ponantur in Assis, Juratis, &c. Tibi præcipimus, quod si A. sit perpetuo languidus. Vel sic, ætatem lxx. annorum excedens, vel in tempore sum. tuæ in balliva tua, vel com. tuo moram non fecerit tunc ipsum, &c. in Assis, Juratis, seu Recognitionibus aliquibus non ponas, seu poni facias contra formam provisionis præd. Teste, &c.

F f

Clerks

Clerks who have Lands or Tenements by descent or B purchase may be put and sworn in Assises and Inquests as well as other Lay-persons, as appeareth by the Register, and it seemeth the Law is such. But if such Clerk be in the King's service, he shall have a special Writ for to discharge him, and the Writ is such :

*Rex Vic', &c. Quia Magistr. R. Clericus in obsequio nostro, vel in obsequio venerabilis Partis J. Eliens. Episc. his diebus moram fac. continuam, ut dicitur : Tibi precipimus, quod ipsum R. occasione terrarum & tenementor. que tenet in comitat. predict. in assis, juratis, seu recognic. aliquibus non ponas seu poni fac. quamdiu in obsequio nostro, vel ejusdem Episc. moram facit su-
pradict. Teste, &c.*

And by the Writ it appeareth, that a Clerk shall be put and returned in Pannels and Juries, if he be not in the service of the King or other Person for whom the King will write to the Sheriff, that he do not empanel him, &c. But if the Sheriff do empanel and return such Clerks, they ought for to appear, otherwise they shall lose issues, and they have no remedy if they have not such Writ as before.

And if the Sheriff do empanel, or return them in Juries C after such Writ directed unto him, then, as it seemeth, They shall have Attachment against the Sheriff, &c.

But if the Sheriff do return Men who are dwelling in D other Counties, or past 70 years of age, or those who are sick, then they shall have an Action upon the Statute against the Sheriff, although they have not sued forth such Writ, directed to the Sheriff, because the Statute is a Prohibition to him, that he return not such Persons, and, it seemeth, the Sheriff is bounden to take notice of the Statute at his peril ; *tamen quere.*

And if the Sheriff do return any pannel Men who are not sufficient to pass in the Action of Lands and Tenements, &c. then the Juror may have an Action upon the Statute ; which is such :

*Rex Vic', &c. Cum ad communem utilitatem populi regni nostri de commu. consilio ejusdem regni statutum sit, Ne quis ponatur in Ass. juratis seu recognitionibus aliquibus, nisi habeat terras aut tenementa ad valenc. xl. s. per annum ad minus, ita tamen quod coram Justic. itinerant. ad communia placita in itineribus suis, & etiam in assis, juratis seu recogn. quod civitatibus burg. & aliis villis mercatoribus emiserint faciend. fiat prout hactenus fieri consuevit : Tibi precipimus, quod si A. terras vel tenementa ad valenc. tanti per annum non habeat,
tunc*

tunc ipsum A. in assisis, juratis, seu recogn. non ponas seu poni facias contra formam Statuti, &c.

E And if the Sheriff do the contrary, &c. he shall have an Attachment against the Sheriff. And by the Statute the Sheriff ought not to empanel any Juries to try any matter which shall be tried out of the County, if they may not expend 5 l. by the year, &c. And if he do, the party shall have an Action upon the Statute of 21 E. 1. de ponendis in Assisis & Juratis.

F And if the Sheriff return to any pannel men who dwell within ancient Demefn for their lands within ancient Demefn, then they may have a Writ against the Sheriff, that he do not return them: and the Writ is such:

Rex Vic. Cum secundum legem & consuetudinem regni nostri hactenus obtentam & approbatam, homines & tenentes de maneriis que sunt de antiquo dominico Coronæ Angl. pro terris & tenementis que tenent de eodem dominico in Ass. jurat. seu recogn. aliquibus poni non debeant, nisi tantum in his que in Cur. hujusmodi maner. debeant fieri: Tibi præcipimus, quod homines & tenentes nostros de manerio nostro de I. quod est de antiquo dominico Coronæ Angl. un dic. pro terris & tenementis que tenent de eodem manerio, in assisis, juratis, seu recognic. aliquibus extra Cur. maneriorum prædict. non ponas, seu poni facias contra legem & consuetud. prædict. nisi terras & tenementa de alia tenura teneant, per quam secundum formam Statuti de communi consilio regni nostri inde provisi, in ass. juratis, seu recogn. poni debeant, & distinctionem si quam eisdem hominibus & tenentibus nostris occasione prædict. feceris, sine dilatione relaxes eisdem. Teste, &c.

And by that Writ appeareth, That all the Tenants may sue the Writ, as they may sue forth a *Monstraverunt*; and if the Sheriff do contrary to the Writ, they shall have an Attachment against him, and any of the Tenants may sue the Writ in his own name if he will; and then the Writ shall be such:

Rex Vic', &c. (ut sup. usque,) Tibi præcipimus, quod A. tenentem. Vel sic; A. & B. tenentes de manerio de M. quod est de antiquo dominico, &c. ut supra.

And although that the Manor be not in the King's hands; yet the Tenants shall have the Writ against the Sheriff if he empanel them, &c. And also they shall have the same Writ against the Bailiffs of the Liberty who have return of Writ, if they return any of the Tenants who hold of a Manor which is ancient Demefn, for Juries, Assises, or Inquests, &c.

Writ upon the Statute of 23 Ed. 3.

And also the Sheriffought not to return Coroners in Assises, Juries or Inquests, nor Verderors, nor Foresters, nor other Officers of the Forest, and they may have a Writ for to discharge them; and the Writ shall be such:

Rex Vic', &c. Quia A. unus Coron. nostrorum com. tui ad ea que ad officium coron. pertin. in eodem com. exercend. intendere non potest, si in Ass. Juratis seu Recogn. aliquibus ext. eundem com. ponat. Tibi precip. qd. si ita est, tunc A. in Ass. Jurat. seu Recogn. aliquibus extra com. tuum non ponas seu poni fac. quo minus officio intend. possit supradict.

And by that it appeareth, That the Sheriff may return the Coroner to enquire of affairs in the County before Commissioners or Justices of the Peace. But upon Actions sued in the Common Pleas, or King's Bench, they shall not be returned in any pannel. And for Verderors or Foresters, or other Officers, the Writ is such:

Rex Vic', &c. Cum Dom. Edw. quondam Rex Angl. progenitor nost. per literas suas patent. concessit pro se & hered. suis quod forest. viridar. aut alii ministri forest. sue non ponant in Ass. Juratis seu Recogn. aliquibus extra forestam illam capiend. Tibi precip. qd. si A. viridarius noster foresta nostr. de S. existat, aut forestar. &c. tum ipsum H. in Ass. Jurat. seu Recogn. aliquib. extra forestam illam capiend. non ponas seu poni fac. juxta form. provisionis predict. ut district. si quam. Vel sic: Quia unus viridar. nostrorum foresta nostr. de S. in com. tuo, ad ea que ad offic. viridar. pertinent, in eadem foresta exercend. intendere non potest, si in Ass. &c. ponatur extra forestam predict. Tibi precipimus, ut supra.

Writ upon the Statute of 23 Ed. 3.

IF a man do retain my Servant being in my service, for which the Servant departeth from me, &c. and goeth to serve the other, I shall have an Action against him who retained him, and against the Servant upon the Statute of 23 Ed. 3. And the Writ shall be Attachment against them because the Statute is a Prohibition to them, that they shall not do so; and the form of the Writ is such:

Rex Vic', &c. Si A. fecerit, &c. tunc attachias I. de B. ita qd. cum habeas coram Justic. nostris, &c. ad respond. tam nobis quam prefat. A. quare cum per nos & consil. nostrum pro communi utilit. regni nostri ordinat. sic. Quod si aliquis messor, falcator, aut alius operar. vel serviens cujuscunque status seu condit. fuerit in servitio alicujus retent. ante finem termini concordat. a dicto servitio sine causa rationabili vel licentia recesserit pen.

pen. imprisonmenti subeat. & nullus sub eadem pena talem in servitio suo recipere vel retinere præsumat: Nec ullus vadia, liberationes, merced. seu salaria maiora quam solita sunt præstare. anno regni Regis E. 3. progenitor. nostri 20. vel annis communibus quinque vel sex proxim. precedentibus, alicui servienti solvat velolvere permittat sub pena dupl. illius quod sic solutum aut promiss. fuerit illi qui ex hoc senserit se gravari. applicand. præd. I. R. de C. nuper servien. præd. A. in servit. suo apud B. retent. qui ab eodem servit. ante finem termini inter eos concord. fact. sibi præmiss. per ipsum I. de salar. plus solit. recipiend. sine causa rationabili & licenc. præfat. A. recessit, in servit. ipsius I. quamquam ipse de præf. R. eidem A. restituend. requisitus fuerit, admittit & retinuit, in nostri contemptum, & ipsius A. grave damnum, & contra form. ordination. præd. attachias etiam præf. R. ita qd eum habeas tunc ibid. ad respond. tam nobis quam præf. A. quare a servit. ejusd. A. sine causa rationabil. & licencia sua, ut præd. est recessit in nostri contempt. & ipsius A. grave damnum, & contra ordinationem præd. & habeas ibi hoc breve. Teste, &c.

C And if a man be required to serve, and hath not Lands nor Tenements to live upon, nor other Art or Trade, and he refuseth to serve, then he who requireth him to serve shall have this Writ:

Rex Vic, &c. Si W. &c. tunc attachias R. ita quod eum habeas coram Justic. nostris, &c. ad respondend. tam nobis quam præf. W. quare cum per nos & consil. nostrum pro communi, &c. (ut supra usque ibi) ordinat. sit, quod quilibet homo & femina dicti regni nostri, cujuscunque conditionis fuerit libera vel servilis potens in corpore, & infra ætatem sexaginta annorum, non vivens mercurata, nec certum exercens artificium, nec habens de suo proprio unde vivere possit, nec terram propriam circa cujus culturam se poterit occupare, & alteri non serviens, si de serviend. in servitio congruo considerato statu suo fuerit requisitus, servit. teneatur illi qui primo duxerit requirend. & percipiat duntaxat vadia liberation. mercedes, seu salaria quæ in locis ubi servit. debeat consueta sunt præstari, Anno regni regis Ed. 3. 20. vel annis communibus quinque vel sex præced. Et si talis vir vel mulier sic de serviendo requisitus hoc facere noluerit, statim capiatur & mittatur proxima gaole, & ibidem sub arcta moretur custod. quosque securit. invener. de serviend. in forma prædict. idem R. de conditione hujusmodi existens præfat. W. quamquam ipse ad serviend. eidem W. pro salario statui suo competenti dictis annis communibus præcedent. consil. sæpius requisit. fuerit, penitus servit. recus. in nostri contemptum, & ipsius W. grave damnum & contra formam ordination. prædict. & habeas, &c. Teste, &c.

And if the Servant be retained in Winter to serve, and A
after he will depart from his Master in the Summer, and
serve in another place, then he whom he served in Win-
ter, shall have a Writ to compel him to serve him in
Summer, which is such:

*Rex Vic', &c. Si W. de C. &c. tunc pone I. de S. quod sit,
&c. ad respond tam nobis quam pref. W. de G. quare cum per
nos & consil. nostrum pro communi utilitate regni nostri stat. sit,
quod nullus serviens cujuscunque stat. fuerit seu conditionis extra
villam, ubi moratur in Hyeme ad serviendum alibi in aestate, si
servitium in eadem villa invenire possit sub pena imprisonment
exeat, excepto quod homines in comitatu Staff. Lanc. & Darb.
& de March. Wallie tempore Augusti ad laborandum in aliis
com. veni. & salvo, prout hactenus facer. consuever. redir. possit,
prefat. I. in servitio ipsius W. apud F. in Hyeme nuper retentus,
predict. W. seu aliqui alii in villa predict. quanquam ipse ad
serviend. in eadem villa pro salario competenti sepius requisitus
fuerit servire recusavit, in nostri contemptum, & ipsius W. grave
damnum, et contra formam statuti pred. & habeas ibi nomina
pleg. & hoc breve. Teste, &c.*

The Lords of Dowers, or Justices of Peace, may commit B
Vagrants to prison, if they will not serve, and they may
command the Gaoler to set him at liberty, without any o-
ther Writ.

And if a Man be retained in Service, and go wandering C
abroad out of his Service, another man may compel him
to serve him, &c. because he is out of Service.

And so if a Man do retain anothers Servant, not knowing
that he was in the Service of the other, he shall not be pu-
nished for so doing, if he do not retain him after notice of
his first Service.

An Infant of 12 years of age shall be bound by his Co- D
venant to serve in Husbandry.

A Woman of such age shall be also bound to serve in
Husbandry by her Covenant.

If a Man take an Infant or other out of anothers Ser-
vice, he shall be punished, although the Infant or other
were not retained.

An Infant by his Covenant shall be bounden to serve in
Husbandry, although he may spend 40s. or 12 Marks by
the year.

And so a Gentleman by his Covenant shall be bound to E
serve although he were not compellable to serve. For if a
Gentleman, or Chaplain, or Carpenter, or such which shall
not be compelled to serve, &c. yet if they covenant to serve
they

they shall be bound by their Covenant, and an Action will lie against them for departing from their Service.

F And if a man do retain one to serve him for 40 days, and another doth afterwards retain him to serve him for a year, the first Covenant is avoided, because the Retainer was not according to the Statute.

And so if a man be retained to serve at every time he shall be required, it is no Retainer according to the Statute, but a Covenant, if it be by Deed ; and without Deed it is void.

G And a Man shall not have an Action against an Apprentice upon his departure, upon the Statute.

H And if a man do retain one to serve him, and doth not exprefs for how long he shall serve him, he shall serve him for a year : for that Retainer is according to the Statute.

If a man who is not to have any Servant, do retain one to serve him, &c. the Retainer is void.

I He who hath not sufficient Lands of his own to occupy, shall be compelled to serve.

K And a man may retain one for two or three years, and it is good.

L And keeping from the Servant meat and drink, is a good cause for his departure from his Service.

And so for Battery, or Licence to depart, is a good cause of departure.

M The Lord may take his Villain out of the Service of another, if he hath need of Servants, otherwise not.

N If a Woman who is a Servant doth marry, yet it seemeth she ought for to serve.

O If the husband and wife be retained in service during their marriage, &c. if they depart from their service, an Action upon the Statute lieth against them.

P If the servant be drawn away, the master may re-apprehend him, and keep him in spight of him.

Q If the Master's Wife do beat the Servant, it is good cause for the Servant to depart and leave his Service.

Writ de restitutione temporalium.

THe Writ of Restitution of the Temporalities lieth, in case a spiritual person be elected a Bishop, and consecrated, &c. Then he shall have the Writ unto the Escheator, &c. And so it is of an Abbat or Prior, which is of the King's foundation, and ought to have the King's Royal assent, &c. when he is elected and established Abbat or Prior, he ought to sue a Writ to be restored unto the Temporalities; and the form of the Writ for the Prior is such :

Rex Escheatori suo in Com. Devon. sal. Cum venerabil. pat. A
H. Exon. Episc. electionem nup. fact. in Eccles. conventuali de P.
de dilecto nobis in Christ. fratre I. de C. Canonico ejusdem dom.
in Prior. loci illius, cui prius regium assens. adhibuimus &
favorem, confirmaverit, sicut per literas patentes ipsius Episcopi
nobis inde directas constat. : Nos confirmationem illam accep-
tantes, cepimus fidelitatem ipsius Electi, & temporalia priora-
tus predict. (prout moris est) restituimus eidem. Et ideo tibi
precipimus, quod eidem Electo temporalia prioratus predict. libe-
res in forma predict.

And by that Writ appeareth, when a Priory or Abbey **B** is void which is of the King's foundation, that they ought for to have the King's royal assent to go to the Election; and after the Election made, the Bishop ought to confirm the Election, and to certify the King thereof by his Letters, and thereupon the King to take his Fealty; and he to grant this Writ to restore the Temporalities.

And there is another Writ when the King granted only his assent to go the Election, and to make the Prior without any certificate made before of the Election; and the Writ is such :

Rex, &c. Cum venerabilis pater, &c. dilectum nobis in Chri-
sto fratrem C. de D. Canonicum ejusdem domus in Prior. loci illius
elect. cui electioni prius regium assensum adhibuimus & favorem,
in Priorem ejusdem loci profecerit & pastorem, sicut per literas
patentes ipsius Episc. nobis inde direct. nobis constat, nos prefec-
tionem illam acceptantes, cepimus fidelitatem ipsius prefec- &
temporalia Prioratus pred', &c. ut supra.

And the Prior so elected and established, may have a **C** Writ out of the Chancery directed unto the Tenants of the Priory, that they do accept him for their Prior and Lord, &c. and that they be Attendants, &c.

And where the Prior or Abbat ought to have the King's **D** royal assent to go to Election, and obtain the same, and afterwards

afterwards make the Election, and the Bishop doth avoid it, and afterwards they submit unto the Award and Arbitrement of the Ordinary, to name to them one to be Prior &c. And make him Prior, and certifie the King thereof by his Letters, The King thereupon may grant such Writ, viz.

Rex, &c. Cum Venerabilis pater I. Wint. Episc. Elect. nuper fact. in Eccles. S.D. juxta S. de dilecto nobis in Christo fratre T. de N. Canonico ejusdem Domus in Priorem loci illius causavit: & virtute submissionis conventus loci præd. sibi fact. de providend. eidem Prioratui de Prior. idoneo illa vice, dilect. nobis in Christo fratrem I. de W. Canonicum ejusdem Prioratus in Priorem loci illius præfecerit & pastorem sicut per literas patentes ipsius Episc. nobis in^{te} direct. nobis constat, nos cum eodem I. volent. agere gratiose, ceperimus fidelitatem dicti I. & temporal. Prior. illius prout moris est, restituimus eid. Et ideo tibi præcip. &c. ut supra.

And by that Writ appeareth. That the Writ is of the King's special grace; for the King might lawfully refuse the establishment of the Prior, because he was not elected according to the King's Licence and assent to the same, &c. But yet the common use is, That if they cannot agree in the Election to submit themselves unto the award of the Ordinary.

And there is another form of Writ where the King grants his Royal assent to any Chapter to choose the Bishop; and they choose one of the Chapter, and because the Archbishoprick is void, the Guardian of the Spiritualities doth certifie that Election unto the King, and his Confirmation upon the same: and upon that the King grants a Writ of Restitution, &c. in such form.

Rex, &c. Cum dilect. nobis in Christo Prior & Capitulum Eccles. Christi Cant. Custod. spiritualitat. Archiepiscop. Cant. sede vacante, electionem nuper celebrat. in Eccles. Cathed. movend. de discreto viro magistro H. de H. Archidiacono induend. & Canonica ejusdem Eccles. in Episc. loci illius, cui prius Regium assensum adhibuimus & favorem confirm. sicut per literas patentes ipsorum prioris & capituli nobis inde directis nobis constat, nos confirmationem, &c. ut supra.

F And before the Statute of *Præmunire*, The King might seise the Temporalities of the Bishop, if he came to the same by Provision of the Pope; but now he shall forfeit all his Lands and Goods by the Statute of 16 R.2.

G And it appeareth by the Register, if a Bishoprick of Ireland be void, that they shall sue to the King here in England to go to Election of another, and after the Election made,

made they ought to have his Royal assent to that Election, upon Certificate of the Election to the King. And thereupon a Writ shall be out of the Chancery here to the chief Justice of *Ireland*, or his Lieutenant, rehearsing the whole matter, commanding him to take the Bishop's Fealty, and to restore to him the Temporalities; but now the course in *Ireland* is to make such writs there in the King's name, but the King doth nominate the Bishops there, and also in *England*; and then the Chapter shall choose him whom the King hath nominated unto them; and thereupon the Writs are made of course.

But how and in what manner Archbishops and Bishops shall be elected, nominated, presented, invested and consecrated unto the dignity of an Archbishoprick or Bishoprick; See the Statute thereof made, 25 H.8. cap.23.

And the King may give power to another, to give his assent to go unto the Election, and to certify the same Election unto him again, and thereupon to take the Fealty of the Abbat, Prior or Bishop, and to certify the King thereof in the Chancery. And the Writ of *Dedimus potestatem* shall be such;

Rex dilecto suo I. de C. Constabulario suo castri sui de A. B. sal. Compatientes paupertati dilectarum nobis in Christo suppressae & monialium Priorat. de B. vacantis per mortem bone memorie M. nuper Priorese loci illius, cui licentiam nuper concessimus eligend. ac volentes ipsarum laboribus & expens. parcere, gratiose dedimus tibi potestatem prabend. assensum regium vice nostra electioni de futura Prioressa in dicta Ecclesia facta seu in proximis faciend. Et cum electio huiusmodi per literas patentes ipsarum suppressae monialium cum sigillo capituli sui signatas nobis inde directas, tibi fuerit presentata ad huiusmodi assensum loci Diocesano per vestr. literas significand. ut quod suum est ulterius exequatur, nec non recipiend. fidelitat. nomina nostro ejusdem Priorese, si extingat electionem pred. Canonica confirmari, & tibi inde per literas patentes ipsius Diocesani nobis inde directas constiterit, & ideo tibi mandamus, quod circa premissa facias in forma pred. & nos de fidelitate pred. cum illam ceperis sub sigillo vestro distincte & aperte reddas certiores, mittent. nobis tam literas ipsarum suppressae & monialium, quam literas ipsius Diocesani supradict. Teste, &c. ut supra.

And if the Dean and Chapter go to the Election of the Bishop without the King's assent, and certify the same to the King, The King may choose whether he will assent to the Election or not; And if he will give his Royal assent

to the same, Then he shall send a special Writ to some Person to take the Fealty of him; and the Writ in the Register is such :

Rex dilecto & fideli suo I. Justic. suo Hibern. salutem. Cum dilecti nobis in Christo Decanus & capitulum Eccles. de B. vacan. nuper Ecclesia sua prædict. per mortem bonæ memor. Lucæ nuper Episc. loci illius dilect. nobis in Christo M. I. Decanum Eccles. prædict. in suum Episcopum elegerunt & pastorem, & nobis per suas patentes literas supplicaverunt, ut Electioni regium assensum adhibere dignaremur : Nos licet idem Decanus & Capitulum prius a nobis Eligend. licen. non postularerint, ut est moris, volentes tamen eis hac vice grac. facere specialem, eidem Electioni Regium assensum duxerimus adhibend. Nolentes, quod quamvis ipsi hujusmodi licentiam minime postularer. molestentur in aliquo seu graventur : Volentes insuper, eid. Electo, ut ipsius precat. laboribus & expens. grac. fac. uberiores : vobis dedimus potestatem, quod si contingat Election. homini per loci metropolitan. Canonic. confirmari, & vobis unde per literas patent. loci ipsius Metropolitanus nobis inde direct. constiterit, tunc fidelitat. ipsius Electi nobis debitam in hac parte nostro nomine recipiatis, & ei temporalia Episcopatus illius prout moris est restit. faciatis vice nostra, receptis prius ab Episcopo Elect. literis suis factis sigillo suo, &c. & sigillo capit. sui signatis, quod gratia nostra, quem eidem Electo ad præsent. ex mera liberalitate nostra fecimus, nobis vel heredibus nostris non cedat, &c. Teste, &c.

Licence to go to Election.

D **T**HE form of the King's Licence to go to Election is thus :

Rex dilectis sibi in Christo Priori & Conventui Monaster. de Burg. S. Petri sal. Ex parte vestra nobis est humilit. supplicatum, ut cum Ecclesia vestra præd. per mort. bon. memoriæ W. ultimi Abbatis loci illius pastoris sit solatio destituta, alium vobis eligendi in Abbatem & Pastorem ejusdem domus licentiam vobis concedere dignaremur, nos precibus vestris in hac parte favorabiliter inclinati, licentiam illam vobis tenore præsen. duximus concedend. mandantes quod talem vobis eligatis in Abbatem & Pastorem, qui Deo devotus, Eccles. vestr. præd. necessarius, nobisque & Regno nostro utilis & fidelis existat. In cujus rei, &c.

E And when they have made their Election, they ought to sue a Writ to have the King's Royal assent to that Election, and that assent shall be made by Writ, directed to the Bishop of the Diocess, and shall be such :

Rex

Writ of Decies tantum.

Rex Venerabili in Christo Patri P. eadem gratia Episc. Linc. salut. Sciatis quod Electioni nuper factae in Eccles. conventuali Monasterii de B. vestrae Dioec. vacan. per mortem bonae memor. W. ultim. Abbatis loci illius de M. Supprior. ejusdem domus vel de fratre B. Monacho ejusdem domus in Abbatem loci illius Regium assensum adhibuimus & favorem, & hoc vobis tenore praesen. significamus, ut quod vestrum est in hac parte exequamini.

And the Abbat when he is made Abbat, may sue Letters Patents, directed to his Tenant, reciting how he is made Abbat, and how the King hath restored to him the Temporalities, commanding them that they be attendant upon him as their Lord.

Writ of Decies tantum.

THE Writ of *Decies tantum* lieth where any of the Jury who is sworn, taketh of the one party, or of the other, or of both, to give their Verdict, &c. Then he who will may sue this Writ, for it is an action popular. And the Writ of *Decies tantum* lieth against all the Jurors, although they severally take Sums of Money, as some more, some less.

21 H. 6. 32. 5 E. 4. 2. Therefore the release of the Party is not good against the King. 40 E. 3. 33. 44 E. 3. 36. 36 H. 6. 28.

And *Decies tamen* lieth against an Embraceor; if he take Money, as well as against a Juror, otherwise not.

17 E. 4. 5. One Juror may pray his Companions to pass with the one, or the other, because he is persuaded in Conscience with him.

And an Embraceor is he who cometh to the Bar with the Party, and taketh in the cause, or standeth there to survey the Jury, &c. or to put them in fear: but Lawyers may plead in the cause for their Fees, but they cannot labour the Jury, and if they take Moneys to do so, they are Embraceors.

6 E. 4. 5. 13 H. 4. 16. ac. for Attornies.

And the *Decies tantum* doth not lie against the Embraceor if he embrace and take no Money: for he ought to take Money, and also embrace, if the action be maintained.

37 H. 6. 31. ac. per Curiam.

And *Decies tantum* lieth against the Jurors, although they do not give a Verdict, if they take Money: and so if they give a true Verdict, a *Decies tantum* lieth if they take Money.

21 H. 6. 20. 1 Ma. Dyer 95.

And a *Decies tantum* may be sued against the Jurors and Embraceors, and it may be sued against the Justices of Nisi Prius by Bill, and it may be adjourned from them in Banco.

41 E. 3. 5.

And the form of the Writ is such:

Rex

Rex Just. suis de Banco sal. Cum in Statuto nostro apud W. Certain Ju-
an. regni nostri v. edit. inter alia ordinat. sit & statut. quod si rors took
aliquis jurator in ass. jurat. vel inquisit. capiat de una parte vel mony of the
de alia & super hoc debet. convinc. qd. extunc non ponat. in ass. party after
juratis, nec inquisit. & nihilom. committat. prison. & ulterius their Verd.
redimat. ad voluntat. nostr. at S. & W. nuper in quadam inquisit. without any
inter A. petent. & R. tenent. de uno mesuag. cum pertin. in N. Covenant
coram vobis in banco prædict. capiend. positi, tam de præd. A. made be-
quam de præfat. R. contra formam Statuti præd. ceper. ut accipim. fore, viz.
Nos statut. illud inviolabiliter volent. observari, vobis manda- each a mark
mus, quod vocatis coram vobis præf. W. & S. si vobis constar. and were
poterit ipsos in inquisit. præd. positos fuisse, & tam de prædict. A. thereof con-
quam de præfat. R. cepisse, ut prædict. est, tunc inspecto Statuto vict by
prædict. ulterius inde faciatis quod de jure & secundum formam Verdict, and
Statuti præd. fuerit faciend. Teste, &c. fined each a
Mark, so
note that is
out of the
Statute, and

there was no committing to Prison, 39 Ass. 19 Brion. Decies tantum, 15. 8 H. 6. 9,
& 10. Not guilty is no Plea in Decies tantum: but he ought to say that he took no
Money. 6 E. 4. 5. For in a Writ of Maintenance he must say he did not maintain.

F And upon this writ the Justices shall make Process for the
King against the Party, which writ shall be a *Pone* (as seems)
to attach him to appear, and to answer the King for the
same: and there is another form of writ for the party thus:

Rex Vic. &c. Si W. H. fecerit, &c. tunc pone, &c. I. S.
I. F. & W. K. &c. quod sint coram nobis a die S. Michael. in
tres septimanas ubicunque tunc fuerimus in Angl. ad resp. tam
nobis quam præf. W. H. quare cum in Parliament. Domini. Ed.
nuper Regis Angliæ, &c. apud Westm. anno regni sui tricesima
octavo tento, inter alia concordatum existat, quod si aliqui ju-
ratores in Assis, juratis & alitis inquisitionibus capiend. inter
nos & partem, vel partem & partem, quicquam capiant per ipsos
vel per alios de parte conquerentis vel defendentis pro veredicto
suo dicendo, & super hoc per processum in quodam articulo de
Juratoribus anno regni ejusdem avi nostri tricesimo quarto
facto ordinat. convincat. si ve sit ad sectam partis que pro seipso,
vel pro nobis, aut alterius cujuscunque personæ prosequi voluerit,
solvat quilibet juratorum prædict. decies tantum quantum ipse
recipit, & habeat ille qui faciet sectam, unam medietat. & nos
aliam medietatem. Et quod omnes imbraciat. ducend. vel pro-
curand. tales inquisit. in patria pro lucro vel proficuo capiend.
puniantur eodem modo & forma sicut juratores, & si jurator vel
imbraciator ita convictus, non habeat unde in forma prædict.
satisfaciat, habeat prisonam unius anni, prout in ordinatione illa
plenius continet. prædict. I. S. I. F. & W. K. juratores id quadam
inquisit. que nuper sum. fuit & capta coram Justic. Domini. Ric.
nuper

21 H. 6. 54.
Exception
was taken
for want of
the words
(grave dam-
num, &c.)
and disal-
lowed, be-
ing a popu-
lar Action.

nuper Regis Angliæ secundi post conquestum, de banco apud Westm. per breve ipsius nuper Regis de record. inter R. F. & præd. W. H: de averiis ipsius R. aptis & injuste detentis ut dic. positi pro verdict. suo in hac parte dicend. ac præf. W. D. de L. I. imbraciatores ejusdem jurat. ad eam ducend. & procurand. de præf. R. divers. pecuniar. sum. & alia dona apud willam Westm. ceperunt, in nostri contemptum, & ipsius H. grave damnum, & contra form. ordinationis præd. & habeas ibi nomina plegiorum, & hoc breve. And Ambidextor is that Juror or Embraceor, who taketh of one part and the other to restore ten times as much, &c. See Stat. 27 E. 3. cap. 3. 33 E. 3. cap. 8. 38 E. 3. c. 12.

Writ of Champerty.

47 E. 3. 9.

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THE Writ of Champerty lieth, where a man by Co-
A
venant or agreement made by writings or by word,
agreeth to have parcel of the thing or land, or debt which
is in suit, that shall be recovered, if he do recover, to main-
tain and aid him in the action, and in the manner for
which he sueth. Then he who is grieved shall have this
action against him who maintaineth the suit for the same
intent; and the Writ is such:

Rex Justic. suis de banco salutem, Cum inter ceteros articulos quos Domin. E. nuper Rex Angl⁹, &c. ad emendac. status populi regni sui concess. ordinat. sit, quod nullus minist. suus, nec aliquis alius pro parte rei quæ est in placito habenda, negotia quæ sunt in placit. sibi assumit manutenend. nec aliquis jus suum sub hujusm. convent. alteri dimittat: ac L. placit. loquela quæ est coram vobis per breve nostrum inter A. petent. & B. tenent. de uno mes. cum pertinent. in I. pro parte ejusdem habend. jam assumpserit manu tenend. contra form. ordinat. præd. ut accepim. nos ordinat. illam volent. inviolabil. observ. vobis mandam. qd. inspecto tenor. ordinat. præd. ulterius inde fieri fac. qd. de jure & secund. form. ordinat. præd. fuerit faciend. Teste, &c.

And upon that the Justices shall award an Attachment B
against the party out of the Common-Pleas, &c. returnable at a certain day.

And this suit shall be said the King's suit: but yet the C
party may sue an Original Writ out of the Chancery against him who purchaseth parcel of the Land depending the Plea, &c. And the Statute which giveth the action, is the Statute of *Articuli super Chartas*, cap. 11. which willeth that no Minister or other for part of the things which are in Plea take upon him any matter which is in suit; nor none upon any such Covenant shall give up his Right, and if any do so,
and

and be attainted thereof, there shall be forfeit unto the King so much of his Lands and Goods of the taker as doth amount unto the value of the part he hath purchased by such taking upon him.

And by those words it seemeth that he who leaseth his Land pendant the suit, or giveth parcel thereof pendant the Plea, to the intent aforesaid, shall be punished as well as he who is the Purchasor.

- D Anno 30 E. 3. Lib. Ass. It is no Plea, to say he did not purchase pendant the Plea; by which it seemeth if he purchase before the Writ sued to maintain, &c. that he shall be punished, &c. by the Statute, *tamen Quare*. For 19 R. it is holden by all the Court, that if a man bargain for any lands by deed, and afterward an action is brought for the same land, and afterwards pendant the Plea he maketh estate to him, to whom he made the bargain, that it is not Champerty. Br. Champ. 7. Firs 11. Fits Cham. 15. 9 H. 7. 18. ac. Plow. Com. 465. acc.
- E A Surrender made by him in the Reversion pendant the Plea is not Champerty. 17 E. 2. Champ. 14.
- F And if a man purchase Land *bona fide* pendant the Writ, and not to maintain, it is not Champerty. 50 Aff. 3. Br. Champ. 8.
- G And a Disseisor in an Assise shall have a Writ of Champerty, if the Disseisee grant part of the Land by Covenant to maintain, &c. 22 E. 3. 10. Br. Cham. 4.
- H And a man may give to his Son in Frankmarriage or for life, and it shall not be said Champerty, for the Statute in the end thereof is in such manner. But that is not to be intended, That a man may not give Counsel Fees for their pleading. 47 E. 3. 9. 6 E. 3. 3. Fits Champ. 10.
- I And in a Writ of Champerty, 17 E. 2. where the Writ did abate for false *Latin*; the Defendant was put to answer the King's suit for the same matter.
- K And if a man grant a Rent out of the Land, pendant the suit for the Land, the same is Champerty, altho' that that Rent is not as a demand, &c.
- L And Champerty lieth as well upon Covenant made by word, &c. as if it were made in writing to have parcel of the thing, &c.
- M And if the Covenant be to have a Rent out of the Land of another which is not in suit; it is not Champerty. But if he do maintain, &c. he shall have a writ of Maintenance against him for the same, but not a writ of Champerty.
- N And if the Officers of the Court do maintain any Plea pleaded in their Court to have part of the same or other profit by the recovery in that action, the party grieved shall have such a Writ.

Rex Ric', &c. Si R. & M. uxor ejus fecer. &c. tunc pone, &c. I. & W. ball. civitat. nostræ Winton. W. & W. qd. sint coram Justic. &c. ostens. quare cum de communi consil. regni nostr. provi- sum sit, quod nullus minister noster vel aliquis alius manuteneat placita, querel. vel negotia, quæ sunt in Curiiis nostris, vel alibi de terris & tenementis, aut aliis rebus quibuscumq; pro parte rei petit. vel alio proficuo, per convent. fac. inde habend. nec aliquis jus suum sub hujusmodi convent. alteri dimittat, præd. I. & W. W. & W. quoddam placit. friscæ forc. qd. est coram Major. & dist. ball. civitat. præd. inter S. & A. uxor. ejus petent. & præf. R. & M. tenentes de uno mes. cum pertin. in civitat. præd. pro parte tenementi præd. & alio proficuo inde habend. per conven- tion. jam assumpserint pro præf. S. & A. manutenendis & manu- tenent, ad grave damnum ipsorum R. & M. & contra form. Stat. prædict. & habeas, &c.

Writ upon the Statute ; That none be Victualler for the time that he is Mayor, or Sheriff, or Head- Officer of a Town or Burrough.

NOte, that by the Statute of York, no Victualler shall use the occupation, to sell Victual or Wine in gross or by retail, so long as he is in Office in any Town, burrough or City, to keep the Assise of Bread and Wine upon forfei- ture, &c. If a man who is a Victualler be chosen to be Mayor, Sheriff, or other Officer of a Town, Burrough or City, who by reason of his Office is to keep the Assise. By the Statute of 3 H 8. cap. 8. it is ordained, that two discreet Persons of the same Town, &c. who are not Victuallers, be chosen and sworn to assise the Assise of Bread, Wine, and Victual during the time that he is in his office, and then after the price assessed of Wine and Victual, for the time it shall be lawful for him who is chosen Mayor or Sheriff, to sell Wine and Victual for the time that he is Officer. But that Statute doth not extend to London, York, or Coventry to sell or retail Wine or Victual, but in Gross they may. And by the Statute of 6 R. 2. cap. 9. That Victuallers be not cho- sen to the Office of Judge in Towns or Cities, but for want of others, then he shall not sell Victuals upon a pain of forfeiture.

But it appeareth by the Statute of 3 H. 8. what things he may do.

And if any man in London, York, or Coventry, or other place offend against those Statutes, then he who is grieved may

may sue a Writ directed to the Justices of Assise, commanding them to send for the Parties, and to do Right, &c. Or the party grieved may have an Attachment against the Officer, Mayor, Sherfff or Bailiff, who offend contrary to the Statute, to appear before the Justices in the King's Bench, or before the King in the Common Pleas, to answer the matter. And the form of the Writ unto the Justices of Assise is such :

Rex dilectis & fidelibus suis A. & B. Justic. ad Assisas in com. tali capiend assign. salutem. Cum ad communem utilitatem populi regni nostri statutum sit, quod nullus minister in civitatibus, nec in burgis, qui ratione officii sui debeat custodire Ass. de vinis, seu de victualib. dum sit intendens hujusmodi officio, merchandizet de vinis nec de victualibus in grosso nec in retalliam. At jam R. de B. nobis dederit intelligi, quod S. & M. ballivi ville præd. & quidam alii ballivi in dicta villa de S existant. qui ratione officii sui hujusmodi Assisam custodire debent in eadem villa, vina & victualia in grosso & ad retalliam vendunt, contra formam Statuti præd. Nos, si ita sit, remedium in hac parte apponi volentes : Vobis mandamus : quod audita inde querela præd. R. & vocatis partibus coram vobis, earumque rationibus hinc inde auditis, & inspecto tenore Statuti præd. eidem. R. tam pro nobis quam pro seipso super hoc debitam justitiam fieri faciat. prout secundum Statutum præd. foret faciend. Teste, &c.

And if the Action be brought upon the Statute of York, then he who sueth the Action shall have the third part, and the King shall have the residue of the Victuals which is forfeited. And also the form of the Writ of Attachment is such :

Rex Vic' Ebor salutem. Pone, &c. P. de T. de Richmond. nuper ball. will. Richmond. quod sit coram nobis, &c. ostens. quare cum ad communem utilitatem regni nostri Angliæ de communi consilio ejusdem regni concordat. sit, quod nullus minister, &c. ad retalliam sub fortisfactura eorundem ; præd P. dum ball. dictæ ville de Richmond. extitit. de vinis & aliis victualibus diversis ad valenciam centum librarum in prædict. villa Richmond. tam in grosso quam in retallia pluries merchandizavit, & ea ibidem vendidit, ut dicitur, in nostri contemptum manifestum, & dicti populi nostri grave damnum, ac contra formam ordinationis supradictæ. & habeas, &c. Teste, &c.

Writ upon the Statute of Articuli Cleri, that he do not distrain in the Glebe of Parsons; nor in the King's High-way.

THE Writ that no distress be taken in the Glebe-land ^E of the Parson by the Sheriff or other Officer is grounded upon the Statute of *Articuli Cleri*, cap. 6. By which Statute it appeareth that the Sheriff, nor other Officer shall not distrain in the King's High-way, nor in the Glebes of ancient times given to Rectories, and if any Sheriff or other Person do contrary, then he who is distrained may sue this Writ.

See Marlb.
cap. 55.
Vi. 17 E. 5.
43. Fitz Ref-
cous 14. the
party may
Rescous.

And if a Lay-person be distrained in the King's High-way, &c. he shall have an action upon the Statute of *Marlebridge*. But a Spiritual person shall have his action upon this Statute. But by the Statute of *Marlebridge* the King's Officers may distrain in the high way. And after the Writ delivered to the Sheriff, if he be distrained again he shall have an *Alias* and *Pluries*, and thereupon an Attachment. And this Writ is in it self a Prohibition to the Sheriff, and the Writ is such:

Rex Vic, sal. Cum in Articulis Prælatorum & Cleri Regni nostri per Dom. Edw. nuper regem Angl. avum nostrum, de assensu procerum & magnatum regni nostri concess. contineatur, quod districtiones non fiant super Rectores per Vic. aut alios ministros nostros in via regia, aut in feodis quibus olim Eccles. sint dotat. ac jam est gravi querela dilecti nobis in Christo Abbatis de Valle regali persone Eccl. de K. intellexerimus, quod tu colore officii tui terras & tenementa quæ sunt de dote & feodo ejusdem Eccles. apud K. nuper ingressus fuisti, & præfatum Abbatem in terris & tenementis prædict. graviter distrinxisti, & inde distringere non desistis, in ipsius Abbatis præjudicium & libertatis Ecclesiasticæ lesion. manifestam, & contra formam articulorum præd. Nos libertates ecclesiasticas illesas observare volentes: Tibi præcipimus, quod districtiones aliquas in terris & tenementis quæ sunt de dote prædict. Eccles. nullatenus facias, nec quicquam quod in libertatis Ecclesiasticæ lesionem aut enervationem articulorum præd. cedere valeat attemptetis, & districtionem si quam præfat. Abbati in feod. Eccles. suæ præd. ut prædictum est, feceris, sine dilatione relaxes eidem. Teste, &c.

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And it seemeth, That the party who is distrained in the King's high-way, or the Parson in the Glebe of his Church shall have an Attachment against the Sheriff, or other who distrained,

distraigned, although they never sued out before this Writ of Prohibition to the Sheriff; because that the Statute is a Prohibition it self to the Sheriff, &c.

And by the Statute of *Articuli super Chartas*, cap. 12. The Sheriff ought not to make excessive distresses for the King's debt, nor distrain the plough Cattel if he can find others. And if the party will find Sureties to the Sheriff to pay the King's debt before the day of the return of the Writ, the Sheriff ought to deliver back the Cattel. And if the Sheriff do otherwise than is expressed in the said Statute, the party upon that Statute shall have Attachment against him, or he may sue forth a Writ to inhibit the Sheriff that he do not distrain contrary to the form of the Statute, and the Writ is such:

Rex Vic. Derb. salutem. Cum inter ceteros articul. quos celebris memoria Dom. Edw. quondam Rex Angl. avus noster, ad emendac. status populi regni sui ordinavit, contineatur, quod nimis graves district. non capiantur pro debitis nostris. Et si debitor possit invenire sufficient. securitat. pro debit. ill. usque ad unum diem infra diem Vic. quod district. hujusmodi interim relaxatur: Tibi precipim. quod si I. de W. invener. tibi sufficient. securitat. de respond. nobis ad proxim. proferum tuum de centum solid. per quos finem fec. nobis coram Justic. nostris de banco pro licenc. concord. in uno brevi de conventione, & quos ab ipso per sum. Scaccar. nostri exigit, ut dic. tunc districtioni quam eidem W. facis occasione predict. interim supersed. per securitatem supradictam, & habeas ibi hoc breve. Teste, &c.

And there is another form of Writ in such case, thus:

Rex Vic, &c. quod minus gravis districtio non capiatur pro debito nostro, nec nimis remot. ducatur. Et si debitor invenire possit sufficient. & competent. securitat. de debito illo usque ad unum diem infra diem Vic. infra quem debitor sibi inde remedium acquirere valeat, vel alias de debito illo satisfact. quod district. hujusmodi interim relaxatur: Tibi precipimus quod si I. de T. quem pro octo solid. nobis solvend. de exitibus suis coram nobis, & alibi coram Justic. nostris forisfact. virtute sum. Scaccarii nostri tibi direct. distringis, ut dic. invenerit tibi sufficient. securitat. juxta formam articulorum pred. pro debito pred. usque ad unum diem infra diem tuum ad quem tu teneris inde computar. tunc districtionem, si quam eidem I. occasione premiff. fieri feceris interim relaxes eidem pro securitate supradicta. Teste, &c.

Writ for to seise the Land of the Wife which she holdeth in Dower, who marrieth her self without Licence.

See after,
263, 264,
265.

Stamford 9.
it is not.
Law.

NOte, That if the Tenant holdeth of the King in *Capite C* and dieth, &c. his Wife ought not to marry her self again without the Licence of the King; and if she doth, then the King may seise those Lands which she holdeth in Dower, until she have paid a Fine to the King, which is commonly one years value of the Land which she holdeth in Dower; and that is by the Statute of *Prerog. Regis*, c. 3. But it appears by the Register, That the King ought to seise as well the Land of the Husband, as the Land of the Wife which she holdeth in Dower.

And by the same reason, If the Wife have other Lands of her own Inheritance, besides the Land which she holdeth in Dower; that the King may seise that Land also; And the Writ in the Register for to seise the Land, is such:

Rex Escheatori suo, Quia Margarita, que fuit uxor Edmundi Baron. Staff. defuncti, qui de nobis tenuit in Capite, se sine Licentia nostra aut dilecti & fidelis nostri Radulphi Basset, cui id quod ad nos pertinuit de maritagio præd. concessimus, Thomæ de P. maritavit, sicut ex querela ipsius Radulphi accepimus: Vobis mandamus, quod si ita est, tunc omnes terras & tenementa, tam ipsius Thomæ quam prædict. M. in balliva vestra sine dilatione cap. in manum nostram, & ea salvo custodire fac. donec aliud a nobis inde habueritis in mandatis. Teste, &c. per cons.

But now by the Statute of 23 H. 8. cap. 46. the composition is given to the Master of the Wards with three of the Council of that Court:

So they may tax a Reasonable Fine at their discretion, according to the Statute of *Prærogativa Regis*, Stamford 19. acc.

And it appeareth by that Writ, that the King may grant **D** the Marriages of his Widows, as well as of his Wards; and that the woman may agree with him to whom the marriage is granted, and by his assent or licence if she marry, it seemeth she shall not pay a Fine. And if she marrieth without Licence, then he who marrieth her doth the King or his Grantee wrong, and that wrong seemeth to be the cause, That the King shall seise the Land of him who marrieth the King's Widow without Licence.

And it appeareth by the Register, That the said *Thomas P.* may agree with the said *Ralph Basset*, for which the King shall

shall receive his seifure; as appeareth, *Rotulo Clerum Anno 8 E. 2.* But yet I conceive, That the King ought to seife but only the Lands which the woman holdeth in Dow-er, because the Statute giveth no more but that he shall seife that which he holdeth in Dow-er; for if she will not claim nor sue for Dow-er, it seemeth she shall not be fined, nor none of her Land seifed: And also, I conceive, That the King cannot grant the Marriage of his Widows as he may do of his Wards; for if she will live single and not marry, she may so do and shall not pay any Fine. *Ideo Quare.*

If she get Dow-er at the hands of the heir, or of the Committee with-

out Oath. *Quare* whether she may marry without Licence. *Stamford 19.* No, because presently upon the assignment she is a Tenant to the King, and not to the Heir. *Stamford, Prærog. 18. 40 Aff. 36.* The King's Widow had Dow-er without assignment. *Vi. Stamford 18.*

Writ upon the Statute de Anno Primo E. 3. c. 12, & 13. Where the King's Tenant alieneth without Licence.

A Note, where the King's Tenant who holdeth of the King in chief as of his Crown alieneth the Land which he so holdeth of him for life, or in tail, or in fee, without the King's Licence, Then the King ought for to seife the Land for a Fine, &c. But if a man holdeth of the King as of any Honour, or Castle, or Manor being in his hands, which he hath by descent from any Collateral Ancestor, and the Tenant doth alien as above his Lands without Licence granted him by the King: Then if the Sheriff or Escheator will distrain or disturb the possession of the Alinee, he shall have a Writ upon the Statute of 1 E. 3. cap. 13. which shall be such:

Rex Escheator. suo ultra Trent. vel Escheatori suo in Com. S. salutem. Cum de communi consilio regni nostri statutum sit, Ne quis occasione acquisitionis terrarum seu tenementorum, quæ de nobis ut de honoribus tenentur in Capite, licent progenitorum nostrorum quondam Regum Angliæ, seu nostra super hoc non obtenta fac. occasionentur: Vobis mandamus, quod R. filium I. de C. Capellanum occasione acquisition quam tempore Domini Edwardi nuper Reg. Angliæ, fec. Robert. de Samby Milit. de una bovât. terr. cum pertin. in E. quæ de nobis ut de honore de T. tenet. in Capite ut dic. si de nobis sit teneant non occasio- netis contra formam statut. supradict. Teste, &c.

Writ quod Clerici non elegantur, &c.

And upon that he shall sue an *Alias* and *Pluries*, *vel causam nobis significet*, &c. And thereupon an Attachment against the Elcheator or Sheriff if they distrain or disturb him after that Writ directed unto them, if the Lands be holden as above is said. But it appeareth by that Writ, That a man may hold of the King *in Capite*, as of an Honour, but the same is against the Register in the beginning of the Register; as appeareth by the *Præcipe in Capite*: But the use at this day is to take a Fine of him who holdeth of the King of any Honour, which is the Ancient Inheritance of the King, who alieneth his land without Licence: But *Quare* what in Right ought to be done in that case.

Writ quod Clerici non elegantur in Officio Ballivi, &c. pro terris suis.

IF a man who holdeth certain Lands or Tenements by reason of his said Lands ought to be chosen Bailiff, or Beadle, or Reeve, or in such like Office for his Lands; If such a man be made a Clerk, or is within holy Orders, Then he ought not to be chosen into such Office for his Lands. And if he be elected to such Office of Bailiff or Beadle, &c. he shall have a Writ to discharge him, which shall be such:

Rex Ballivis I de L. salutem. Cum secundum legem & consuetudinem regni nostri Angliæ Clerici infra sacros ordines constituti, ad officium Ballivi seu Bedelli eligi non debeant, nec hætenus consuever. ac jam ex parte T. de M. Magistri Hospitalis nostri de C. capellani acceperimus, quod vos ipsum Magistrum ad Officium Ballivi seu Bedelli manerii prædict. elegistis jam de novo, & ipsum Officium illud assumere compellere nitimini, in ipsis Magistri grave damnum, & contra legem & consuetudinem supradictam: Saper quo nobis supplicavit, sibi per nos de remedio prævideri, & quia non est juri consonum, quod dictus Magister, qui nobis in Hospitali prædicto pro salubri statu nostro, & pro animabus progenitorum nostrorum quondam Regum Angliæ, & pro statu ejusdem Hospitalis ac Cantariis, Eleemosynis, & aliis piis operibus in eodem Hospitali manutenendum & sustentandum continue deservit ad desistendum alibi extra idem Hospital. in secularibus negotiis compellat. Vobis precipimus quod distractioni & compulsioni si quas eidem Magistro ad Officium Ballivi seu Bedelli in Manerio prædicto assumend. feceritis, omnino supersedeatis, & eas sine dilatione relaxetis, & denarios si quos per amerciamenta, vel alio modo ex causa prædicta

prædicta ab eo levaveritis, eidem Magistro restitui fac. indilat. sub periculo quod incumbit. Teste, &c. And he may have an *Alias* and a *Pluries*, and Attachment upon the same.

Writ that Parsons, nor Prebendaries should not be charged for their Goods in their Possessions to Fifteens, which are annexed to their Prebends.

A THE Writ for Prebendaries, or other spiritual persons to be discharged for their Goods of the Benefice in their Possessions lieth; Where the Sheriff or Collectors of the Fifteens will distrain the Parsons or Prebendaries in their spiritual Possessions by their Goods being in their Possessions to be Contributories to the payment of Taxes or Fifteens granted, &c. And if they be distrained, they shall have such Writ:

Rex Taxatoribus decime & xv. nobis ultimo per communitatem regni nostri Angliæ concessarum in Com. Glocestr. salutem. Ex parte W. Præbendarii Præbende de B. in Eccles. de S. nobis est ostens. quod cum vos occasione x. & xv. prædictar. nobis per laicos concessar. in propriis bonis ipsius W. de temporalibus Præbend. sue prædict. annis exeuntibus, quæ ad decimam inter spiritualia in singulis taxationibus, præstationibus, hujusmodi decime taxantur, & de quibus decimis dari consuevit prædictam decimam, & quindecimam inter laicos assidere, taxar. & levare intenditis minus juste, in ipsius W. damnum non modicum & gravamen. Et quia nolumus quod iidem W. de hujusmodi bonis suis, de quibus decimam nobis dat inter spiritualia de prædict. decim. & quindecima per laicos concess. oneret. Vobis mandamus, quod ipsum W. in propriis bonis suis, quæ inter spiritualia ad decimam taxantur, & de quibus decimam nobis dat, ut prædictum est, ratione decime & quindecime prædict. nobis per laicos concessæ non molestetis in aliquo seu gravetis, & distraction si quam ei ea occasione fieri feceritis, sine dilatione relaxar. fac. eidem. Proviso quod de terris & tenementis, si quæ per præf. W. vel prædecessores suos ad prædict. præbend. post Annum Domini Edwardi quondam Regis Angliæ avi nostri vicesimum, acquisita fuerint, nobis de hujusmodi decima & quindecima juxta bonorum & catallorum in dictis terris & tenementis existent, & de eisdem provenient. respondeat. ut est justum. Teste, &c. And upon that he shall have an *Alias*, *Pluries* and *Attachment*.

Writs directed to make Proclamation, that none cast Filth or Dung into Ditches or Rivers, near Cities or Boroughs, made Anno 12 R. 2. cap. 10.

IF any one cast any dung, filth or intrails of Cattel into ^B Ditches, Waters, or other places which are next to any City, Borough or Town, he who will may sue forth a Writ directed unto the Mayor, or Sheriff, or Bailiff of such Town, &c. That they make Proclamation that none so do, and that those that have so done, that they cause to remove and carry away the same from thence; And this Writ is founded upon the Statute of 12 R. 2. cap. 13. and the Writ is such:

Rex Ballivis suis Vill. de Novo Castro super Tinam salutem. Cum in statuto in Parlamento nostro apud Canterb. Anno regni nostri 12 tento, edito, inter alia contineat. quod proclam. fieret, tam in Civitate Lond. quam in aliis Civitatibus, Burg. Villis, & eorum suburbis ubi necesse foret, tam infra libertates quam extra, quod omnes illi qui fimos, exitus, intestina, aut alia fetida jactaverant sue posuerant in fossatis, ripariis, aquis, & aliis locis infra, circa, & prope diversas Civitates, Burgos, & Villas regni nostri Angliæ, & Suburb. eorundem, ea totaliter amoverent & asportarent ante festum, &c. sub pena xli. nobis solvend'. Et quod Majores & Ballivi de qualibet Civitate, Burg. & Villa & etiam Ballivi libertatum eos compellerent ad hoc faciendum, sub pena consimili. Et insuper, quod proclam. fieret tam in dicta Civitate Lond. quam in aliis Civitatibus, Burgis, Villis, & aliis locis superius nominatis, quod nullus ejusdem conditionis foret, hujusmodi nociva, exitus, fimos, intestina, & fetida in fossatis, ripariis, aquis, & locis supradictis extunc jactaret sive poneret. Et si quis hoc fecerit, vocetur coram Cancell. per breve ad sectam illius qui se inde conqueri voluerit, & si inventus foret inde culpabilis, puniatur secundum discretionem Cancellar. prout in statuto predicto plenius continetur. Jamque ex parte dilectorum nobis in Christo Prioris & fratrum Ordinis Heremitarum S. Augustini dicte Vill. de Novo Castro super Tinam intelleximus, quod quamplures homines ejusdem Villæ, fimos, exitus, intestina, & alia fetida in quadam via que se ducit prope mansionem predict. Prioris & fratrum in eadem Vill. jactaverunt & posuerunt, in ipsorum Prioris & fratrum, ac aliorum converſarum. & tranſeuntium ibidem nocument. & Vill. sue periculum

periculum manifestum & contra formam statuti prædicti. Nos volent. stat. illud inviolabiliter observari, vobis præcipimus, strictius injungentes quod in Vill. prædicti. ex parte nostra proclamatur. fac. ne quis, cujuscunque conditionis fuerit, aliquis nocivus, exit. fimos, intestina, seu fetida quacunque in via prædicti. jactet seu ponat. Et quod omnes, & singuli qui hujusmodi nociva ibidem jactaverint seu posuerint, ea sine dilatione amoveant & asportent juxta formam statut. præd. Teste, &c.

And it seemeth, That the Chancellor may award a *Pone* against him, or an Attachment to make him come before him in the Chancery; and there punish him according to his discretion. And it seemeth that he who is grieved by that *Nusance*, may have an action upon the Statute against him who did the *Nusance*, and recover damages for the *Nusance* done to him, *tamen Quare*.

But by the Common Law; if a man doth any thing to the annoyance of my Freehold, or of my Land in which I have an Estate for years, I shall have my Action upon the Case for the same, or a Writ of *Nusance* if it be annoyance unto my Freehold.

Writ of Assise of Novel Disseisin.

A **T**HE Writ of *Assise of Novel Disseisin* lieth where Tenant for life, or Tenant in Fee-simple, or in tail is disseised of his Land or Tenements, or put out thereof against his will, that is a Disseisin; and he shall have an Assise of *Novel Disseisin* of that ouster, &c.

B And the Rule in the Register is, That if a man will bring an Assise of *Novel Disseisin* of Lands in the County where the Common-Pleas is; That then the Assise shall be brought in the Common-Pleas: and if the Common-Pleas be in one County, and the Kings-Bench in another County, if the Assise shall be brought of Lands in the County where the King's Bench is, Then the Assise shall be brought and returnable in the King's Bench: and if both the Benches be in one County, the usage is to bring the Assise in the Common-Pleas or King's-Bench at pleasure; but that, as I think, is against the Rule of the Register.

C And the Assise of *Mortdaucesor* shall be brought in the like manner, as the Assise of *Novel Disseisin* shall be before the Justices of the Common-Pleas, or King's-Bench; and in the Assise a day certain shall be put thus; *Usque in diem*

See before
109. acc.
in Attaint.
Ve. 7. Ass. 7.
Br. Assise
Jervis 120.

Writ of Assise of Novel Disseisin.

Jovis post Quindenam, &c. But in *Assise of Mortdaucestor's* the common day shall be in *Quindenam*, &c. *vel in Octabis*, &c. as in other Pleas.

30 Ass. 44. B.
Assise 116.
for their Patent ought to be dated fifteen days before the day.

And in an *Assise of Novel Disseisin* in the Common Pleas, or in the King's Bench, the Justices may give day out of Term, thus, *Usque ad diem Jovis proxime post festum S. Lucie*, &c. because that the *Assise* hath not any day of Return in the Term, but day certain which the Justices will give, and that may be as well out of Term as in Term. And by the Statute of *Articuli super Chartas*, in every Writ of Summons and Attachment there ought to be fifteen days betwixt the day and the return thereof; but in *Assise of Novel Disseisin* in the Common Pleas, or in the King's Bench, there needeth not be fifteen days between the date and return thereof, as it seemeth by the Statute.

29 Ass. 40.
Br. Assise
300.

And in an *Assise of Novel Disseisin* sued before Justices in Eyre, or before Justices of the King's Bench, or Common Pleas, the Plaintiff ought not to have any Patent to the Justices, for they have authority without a Patent: And so have Justices of *Assise* authority to take *Assises of Novel Disseisin* without any Patent made unto them by the Statute of *West. 2. cap. 13.* but then the form of the Writ is such:

Rex Vic. &c. Questus est nobis A. quod B. injuste & sine judicio disseis. eum de libero tenemento suo in C. post primam transfret. Domini H. Regis filii in I. in Valcon. & ideo tibi precipimus, quod si præd. A. fecerit te secur. de clamore suo prosequend. tunc facias tenement. illud reseisiri de catal. quod in ipso capta fuer. & ipsum tenementum cum catal. esse in pace, usque ad primam assisam cum Just nostri in partes illas venerint, & interim fac. 12. liberos & legales homines de Visu. illo. vider. tenement. illud. & nomina illorum imbrevari, & sum. eos per bonos sum. quod sint coram præfat. Just. ad præfat. ass. parati inde facer. recognit & pone per vad. & salvos pledg. præd. B. vel Ballivum suum si ipse inventus non fuerit, quod tunc sit ibi ad aud. ill. recogn', &c. & habeas ibi sum. nomina pleg. & hoc breve.

Which
proves, that
the Bailiff
is party quod
dammodo.
Vi. 7. Ass.
12. Br. Assise
222.

And if the Writ of *Assise* be brought before other Justices than before the Justices of *Assise* in the same County, Then the Writ shall be in another form, which is such:

Rex Vic', &c. Questi sunt nobis A. & B. uxor ejus quod C. H. injuste, &c. disseisvit eos, vel præfat. B. de libero tenemento suo in N. Et ideo tibi precipimus, quod si prædict. A. & B. fecerit, &c. in pace usque ad certum diem quem dilecti & fidelis

fidele
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rimu
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fideles nostri R. & F. tibi scire fac. & interim, &c. & sum. &c. tunc sint coram prefat. R. & F. & his quos sibi associaverimus ad certum locum quem idem R. & F. tibi sciri fac. parati inde facere recognitionem. Et pone, &c.

And upon that Writ they ought to have a special Patent directed to the same Justices, because they are not the Justices of Assise of that County, and the Patent shall be such :

Rex dilectis & fidelibus suis R. & F. salutem. Sciatis quod constituimus vos Just. nostros una cum his quos vobis associaverimus ad ass. Novel diff. capiend. quam A. & B. uxor ejus arrain. coram vobis per breve nostrum versus C. de tenementis in N. & ideo vobis mandamus, quod ad certos diem & locum quos ad hoc provideritis ass. illam capiatis factur. inde quod ad Just. pertinet secundum legem & consuetudinem regni nostri, salvo nobis amerciamtntis inde provenientibus : Mandamus enim Vic. nostro Linc. quod ad certos diem & locum quos ei sciri fac. ass. illam coram vobis venire fac. In cujus rei testimon. has literas nostras fieri fecimus patentes, Teste, &c.

And if the Writ aforesaid be directed to the Sheriff, and those who are assigned by the Writ to be Justices of that Assise, be the Justices of Assise in the same County, then it seemeth the party needeth not to have a special Patent to them for that Assise ; for their general Patent to them to take all Assises shall be sufficient for that Assise and all other Assises : For the Justices of Assise use but to make one general Precept for all Assises according to their general Commission and Patent ; and not to make a special precept for every special Writ directed to the Sheriff, and especial Patent made unto them to take any special Assise for such party.

And if an Assise be brought in the Common Pleas, or King's Bench, there the form of the Writ is :

Questus est nobis A. quod B. injuste, &c. (usque ibi) in pace, usque ad diem Sabbati in Clavis S. Michael proxim. futur. Vel sic, Usque in diem Sabbati proxim. post crastinum annimarum proxim. futur. & interim, &c. & summ. &c. quod, &c. coram nobis apud W. vel coram Justic. nostris apud W. parati inde, &c.

And in Assise when he purchaseth the Writ, he ought to find Sureties in the Chancery, and then the form of the Writ is such :

Rex, &c. Questus est nobis A. quod injuste, &c. diff. eum de libero tenemento suo in N. post primam transfretat. Domini H. Regis filii I. in Vas. Et quia predict. A. fecit nos secur.

Writ of Assise of Novel Disseisin.

secur. de clamore suo prosequend. per C. & D. in Com. tuo, tibi præcipimus, quod facias tenementum illud reseisiri, &c. ut supra.

And another form of the Writ against a Body corporate, is thus :

Questus est nobis A. quod B. Major. Civitatis C. & communitas ejusdem Civitat. injuste, &c. Vel sic, Questus est nobis A. quod I. Abbas beatæ Mariæ Ebor. & frat. P. de C. commonachus ejusdem Abbatis & frat. I. de P. conversus ejusdem domus injuste, &c. Vel sic, Questus est nobis C. Capellanus Cantariæ in Eccles. de N. quod B. injuste, &c.

If a man have a Rent-service, or a Rent-charge, or Rent-seck, issuing of Land for life, in tail or in fee, if he be disseised of the Rent, he shall have an Assise, and the Writ shall be general ; *quod injuste, &c. disseisivit eum de libero tenemento suo in N.* and shall make his Title to the Rent.

And the Rule in the Register is, That when a man is disseised of a Rent-charge, or of a Rent-seck, it behoveth that all the Tenants of the Tenements charged, be named in the Writ of Assise, and all the Land put in view, altho' he were disseised but by one Tenant only, but it is otherwise of a Rent-service.

And in an Assise of *Novel Disseisin* a man shall not vouch any one, unless he be named in the Writ, and present when he is vouched, and would presently enter into the Warranty, and warrant the Land, &c.

But in an Assise of *Mortdauncestor*, he may vouch at large. And a man shall have an Assise of *Novel Disseisin* of an Office if he have the same for life ; and the Writ shall be, *Quod disseisivit eum de libero tenemento suo in D.* and he shall make his plaint of the Office, and shew his Title in the plaint.

6 Ass. 12 Br.
Assise 145.

And so if a man have any profit granted unto him out of Land for life, or in Fee, as to have the fruit of Apples, Nuts, Acorns, or other profits whatsoever, he shall have an Assise of them if he be disseised of them, as appeareth by the Statute of *West. 2. cap. 25.*

And so of Toll, Tonnage, Passage, Pontage, Pannage, and other like. And if Tenant by Statute-Merchant, or by Statute-Staple be disseised of any Lands which they have in execution until their Debts be levied, they shall have an Assise of *Novel Disseisin* and recover their term ; and yet they shall have but a Chattel, *scil.* the Land for the certain term of years, but that is by reason of Statutes there-of made.

And

And so he shall have an Assise, &c. of the Land which he hath in execution by *Elegit*, if he be deforced thereof by the Statute of *West. 2. cap. 18.*

H And by the Statute of *W. 2. cap. 25.* Assise is given if one with his Cattel do eat the several Pasture of another, the other may have an Assise of the Pasture, and waive the Possession, although the other do not claim the Freehold of the Land.

I And so if the Lord, or other man who hath a Rent issuing out of the Lands, do often distrain for the Rent or service where none is behind, the Tenant may have an Assise for this distress by the Common Law. And that Assise lieth between the Lord and the Tenant, or between the Lord paramount, and the Tenant paravail, as appeareth 27 *Ass. 51.* But it seemeth reasonable, that the Tenant have the Assise of *Souient foits* distrained against him who claimeth a Rent-charge out of Land, *tamen quere.* And if a man sueth divers Assises against one man in several Towns, or against several men in several Towns, he may sue forth a Patent to the Justices for all those Assises, and the form of the Patent shall be such :

Rex dilectis, &c. salutem. Sciatis quod constituim. vos, &c. ad Ass. Novel Disseis. &c. quam, &c. de tenementis in N. & ad Assisam Novel Disseis. capiend. quam idem A. &c. coram vobis per aliud breve nostrum versus, &c. de tenementis. Et sic si plures fuerint.

[179]

A If a man be seised of parcel of a Rent which is payable at a day, and afterwards the Tenant will not pay the residue of the same Rent which is due at the same day, he who ought to have the Rent shall have an Assise of *Novel Disseisin* of the whole Rent, as well of that which he is seised of as of the residue, and that seisin of parcel of the Rent shall be to him a seisin of the whole Rent. And if a man do distrain for his Rent pendant an Assise for the same Rent, he shall abate his Assise, but if he distrain for Homage pendant the Assise for the Rent which is parcel of that service, that shall not abate the Assise, for an Assise doth not lie of Homage.

C And seisin of Rent by an Abbat shall be a sufficient seisin for the Successor to have assise of the Rent if he be denied the same, or rescous made against him, but seisin of Rent of the Father shall not be sufficient seisin to the Son, to have an assise of the Rent if Rescous be made unto him of the Rent; because that the Abbat hath the Rent in the right of his House, which House continueth, and so the seisin of the

29 *Ass. 22.*
Br. *Ass. 302.*
Fitz. 288.

Quare, if for fevent distress 28.
Ass. 50. Br. Ass. 291.

the Predecessor is the seisin of the Successor, but the Father hath the Rent in his own right; and the Son shall have the same in his own right; and then he ought to have a new D
 7 Ass. 18. seisin. And a man may have one assise of several Rents, or
 Br. Ass. 127. of Land and Rent, and Offices and Profits apprender in his
 11 Ass. 13. soil, and all in one Writ. And the Lord Paramount may E
 ibid. 168. have Common appendant in the Lands of the Tenant Pa-
 18 Ass. 4. 20. ravail to his Lands which he hath by purchase; and the
 per Curiam. Tenant Paravail may improve against the Lord Paramount,

as well as he may against other Commoner or Neighbour,
 15 H. 7. 10. if he leave him sufficient Common. *Quod vi. M. 19 E. 3. t.*
 If there be sufficient at the time of the improvement, altho' not after it is not material. Ass. 18. Assise in the Abridgment.

And the seisin of the Guardian, shall give seisin to the F
 Ward to have an Assise if he be disseised. And so of Te-
 nant by Statute Merchant. And seisin by the hands of Te-
 nant for life of Lands out of which a Rent is issuing is a
 sufficient seisin to have an Assise of the Rent, if it be after-
 wards denied.

And so it seemeth payment of the Rent by the Tenant
 for years of the Land is a sufficient seisin to have an Assise
 of the Rent if so it be afterwards denied, *Tamen quare.*
 8 H. 16. 17.
 8 Ass. 16.
 Assise 191.

A Feme Covert shall not be a Disseisors of any Land if G
 she do not actually enter, nor shall she be a Disseisors by
 the Husband's act. And an Infant shall not be a Disseisor
 by his commandment. But a man of full age may be Dis-
 seisor if he command another to enter into Land:

If a man recover a Rent, the Sheriff may put him in sei-
 sin by Wood, or by any parcel of the Land out of which
 the Rent is issuing.

And seisin of Rent by a Parson, or a Chauntry Priest H
 which they have in the right of their Church, shall be a
 seisin to their Successors to have an Assise of the Rent, if
 they be denied the same after the death of their Predeces-
 sors as well as of an Abbat, &c. *quod Vi. 34. E. 3. Lib. Ass.*

A man shall not be adjudged a Disseisor by the act of
 his Tenant at will, altho' the Tenant at will do rescous for
 Rent, &c. he shall be adjudged the sole Disseisor and not
 the Tenant of the Freehold; But if the Tenant of the
 Land pay the Rent unto a stranger who ought not to have
 the same, that payment is a Disseisin to him who ought to
 have the Rent.

Writ of Common of Pasture, Turbary or Piscary.

L **T**HE Writ of Assise of *Novel Disseisin*, of Common of Pasture, or of Turbary, or of Piscary, lieth where a man hath Common of Pasture appendant or appurtenant to his Manor or house, or Land which he hath for term of life, or in Fee-simple, or in Fee-tail, if he be disturbed of his Common, so that he cannot take it as he ought to do, he shall have an Assise of *Novel Disseisin* thereof, and the Writ shall be such :

Rex Vic' &c. Quest. est nobis A. quod B. injuste, &c. disseisivit eum de communi. pastur. suæ in N. quæ pertinet ad liber. tenement. suum in eadem villa, vel in alia villa post primam, &c. as in assise of Land. Et ideo tibi præcipimus, quod si prædict. A. fecerit te secur. &c. tunc fac. duod. liberos & legales homines de visn. illo videre pasturam illam & tenement. & nomina eorum imbrevari : Et sum. &c. coram Justic. vel coram nobis, &c. die Jovis, proxime post crastin. Octabis, &c. Vel sic: Coram Justic. nostris ad prim. assis. cum in partes illas venerint, Vel sic : Coram dilectis & fidelibus nostris R. & F. & his quos, &c. ut supra.

11 H. 6. 22.
The Writ
was de libero
tenemento,
and his
plaint of
Common of
Pasture, for
which the
Writ abated.

And if the Common of Pasture or Turbary, or Piscary be not appendant or appurtenant to any Manor nor Land, nor Tenement, than those words in the Writ which belong to his Franktenement shall be left out in the Writ, and then the Writ shall be such :

Rex, &c. Questus est nobis A. quod B. injuste, &c. disseisivit eum de comm. past. suæ in N. post primam transfratationem, &c. (usque ibi) de visn. illo videre pasturam illam, & nomina eorum imbrevari, &c.

As in the Writ of Assise of Land. And the Patent made unto the Justices of the Assise of Common, is as the Patent made to the Justices of Assise of Land, but where it is said in the Patent of Assise of Land that place, *de libero tenement. suo*, &c. he shall say in this Patent, *de Communia pasturæ in N.* &c.

11 H. 6. 21.
per Pastore.

And if a man have Common appendant or appurtenant to his Freehold which is his Manor or Land which is in several Counties, and he is disseised of his Common, then he shall have an Assise in the County where the Common is and another writ in the County where the Land is, to which the Common is appendant or appurtenant. And if the Land

or

or Common be in one County, and the Land to which the Common is, be in another County, yet the Writ shall be brought in the County where the Land of which the Common is issuing, is, and another Writ in the County where the Land to which the Common is appendant, is. And if the Land be in one County to which the Common is appendant, and the Common be in several Counties. Then he shall have several Writs in the County where the Common is, and where the Land is, and the forms of the Writ are such.

Questus est nobis A. quod B. injuste & sine judicio disseisivit eum de Communia Pastur. sue in N. quæ pertinet ad liberum tenem. suum in R. & K. quæ sunt in consinio Com. tui, & Com. Linc. post primam transfretat. &c. Vel sic, de Com. past. sue in N. in Com. tuo, & Com. Linc. quæ pertinet ad liberum tenem. suum in K. in Com. &c. Vel sic, de Communia pastura sue in R. & K. quæ sunt in consinio Com. tui, & Com. Linc. quæ pertinet ad liberum tenem. suum in K. in prædict. Com. Linc. in eodem consinio, &c.

And upon these Writs he may have a Patent directed to certain Persons who shall do Justice in that Assise upon all the Writs.

Rex dilectis, &c. Sciatis quod constituimus vos Justis. nostros, una cum his quos vobis associavimus ad Ass. novæ diff. capiend. quam A. arrainavit coram vobis per breviam nostram versus B. de communia pastur. in R. & K. quæ sunt in consinio Com. N. & L. ideo vobis mandamus, quod ad certos diem & locum in consinio com. prædict. vel in consinio præd. quos ad hoc provideritis assisam illam capiatis, factur. &c. Mandamus enim Vic. com. præd. quod ad certos diem & locum in consinio Com. præd. vel in Com. prædict. quos eis scire fac. assisam illam, &c.

And in like manner he may sue several Writs of Assise of Common of Turbary, or of Piscary, or other like profits which are in two Counties. And when a man hath a

21 H. 6. 9. 10. Rent which is issuing out of Land in two Counties, if he
7 H. 4. 30. be disseised thereof he shall have an Assise as before is said of
5 E. 4. 2. ac. Common, viz. 2. Writs, one Patent as before is said by the
10 Ass. 5. Stat. 7 R. 2. cap. 10.

45 E. 3. 12. And a man cannot use his Common appendant with
15 E. 4. 32. the Cattel of strangers, unless he bring them to soil his
Ryot.

6 H. 7. 14. Land: But he cannot agist other Cattel there for Money,
11 H. 6. 12. which do not manure his Land.

15 E. 4. 32. The same Law where a man hath Common as an Inhabitant, he shall have it but for those which are levant and couchant within that Town.

And if a man grant Common unto one for his own Cat-
tel, he cannot use his Common with the Cattel of a stranger.
mon appendant for all manner of Beasts, and it was holden it could not be Com-
mon appendant for that the same is not, but for those Cattel which manure his Lands,
9 E. 4. 3. 37 H. 6. 34. and 14 H. 6. 6. But it is common appurtenant. Old N. B. 26.

A man pre-
sumed to
have Com-

And so if a man prescribe to have Common for his own
Cattel, he cannot use Common with other Cattel.

But if a man claim Common for Cattel without number,
or to have Common for twenty Cattel, there he may agist
the Cattel of strangers for money in that Common.

14 H. 8. 2.
If a man
hath Com-
mon sans

number granted, yet the Tenant shall have Common for his Cattel, 11 H. 6. 22.

C And a man may claim Common appendant *ratione Messu-*
agii, but it seemeth it shall be taken that he hath Land ly-
ing to his house, &c. which the Cattel ought to soil, &c.
Quare.

22 H. 6. 42
27 H. 6. 34.
Admittitur.
But Prisor,
it cannot be

but to arable. 20 H. 6. 4. Hulls ac. 5 aff. 2. it cannot be but to ancient Land of that,
and not to Land improved. 10 E. 2. ac. and there the Land to which it may be ap-
pendant is called aid and gain.

D None shall claim Common by Vicinage but the Lord who
hath the possession of the Town, 23 H. 6. But yet it seem-
eth, that one Neighbour may claim Common by Vicinage
in the land of another Neighbour, altho' he be Lord of the
Town, &c. And so if a man claim Common in certain Lands
so long as he dwelleth in such a Town to such a House, or
if he claim Common in the Land until the Lands be sowed,
and after the Corn is cut to have Common there again.

7 E. 4. 26.
32 H. 8.
Dyer 47.
37 H. 6. 34.
ac.

F And if a man be disseised of the Common appendant or
appurtenant to his Land, and afterwards he maketh a Feoff-
ment of the Land to which the Common is appendant or
appurtenant, he shall not have Assise of that Common nor
other remedy.

10 H. 6. 73.
So if he be
disseised of
the Land he
shall not
have Com-
mon till his
entry.

G If a man grant certain Lands to one *Cum Communia in*
omnibus terris suis, &c. And doth not express any place cer-
tain, he shall have Common in all his Lands which he had
at the time of the grant.

5 H. 7. 7.
26 H. 8. 4.
7 E. 4. 27.

H And if a man have Common of Estovers by grant he
cannot build new houses to have Common of Estovers for
those houses.

17. E. 86

The User of Common by Tenants at will, shall be a
I feisin to him in the Reversion to have an Assise, if he or
his Tenant at will be after disturbed to use the Common.

14 H. 6. 6.

H h

And

21 H. 6. 22. And P. 45 E. 3. It appeareth that he who hath Common K
 31 H. 7. 7. granted unto him by specialty cannot agist other mens Cat-
 32 Aff. 82. tel in the Common, but ought for to use the Common with
 Thoyre. his own Cattel, or such Cattel which he hath to occupy his
 Land with, &c. or may manure his Lands with Cows which
 he alloweth to have the keeping for their Manor: But
 Thoyre said, that if a Man grant to me Common for my
 Cattel, that I may take other Beasts to give me seisin in my
 Common, and presently drive them off again, if he who
 granteth the Common do agree thereunto. And in Affise
 7 Aff. Br. of Common, all the Tenants of the Land out of which
 Affise 121. the Common is, ought to be named, &c. As in Affise of a
 Rent-charge.

If a Man have an Affise of Common, and pendent the M
 Writ, he useth the Common, the Writ shall abate, but if
 the Cattel escape into the Land, it shall not abate the Writ
 although they feed there.

And it is to know, Common appurtenant to a Manor N
 may be for Cattel without number, or to a certain number,
 and may be appurtenant to a Manor by prescription or by
 26 H. 8. 4. grant made since time of memory, and that as well for Cat-
 tel certain, as without number. As if at this day a Man
 Plow. Com. granteth to one Common of Estovers, or of Turbary in
 381. ac. 5. Fee-simple to burn in his Manor, by that Grant it is ap-
 40. 9. purtenant to the Manor, and if he make a Feoffment of
 the Manor, the Common shall pass to the Feoffee. And so
 if he grant to a man and his heirs Common as appurtenant
 to his Manor of F. to common in such a Moor, &c. Now
 by that grant the Grantee shall have the Common appur-
 tenant to his Manor, and if he make a Feoffment in Fee,
 or for Life of the Manor, the Feoffe or Lessee shall have
 the Common. As if an Abbat with the assent of his Co-
 vent grant to another and his Heirs to find a Chaplain to
 sing in his Chapel in his Manor of D. if he make a Feoff-
 2 H. 4. 6. ment of the Manor, the Feoffee shall have an Action of
 10 H. 7. 13. Covenant against the Abbat and his Successors by that
 16 H. 7. 9. Grant as it appeareth, M. 2 H. 4. 6. T. Covenant, and H.
 42 E. 3. 3.

Writ of Certificate upon Assise sued.

THE Writ of Certificate lieth in divers manners; one is where the Defendant appeareth by Bail and pleads to the Assise where his Master hath a release to plead, or other matter in writing, of which the Jury cannot have notice, then if the Assise pass against the Bailiff, the Master shall have a Writ of Certificate upon that Writing, and thereupon he shall cause the Assise to return and to be sworn to try that Deed, &c. as shall be more fully after shewed.

As a fine of Recovery.
8E. 3. Br.
Assise 426.
Ho. 4. 4. 5.

And there is another manner of Certificate when the Verdict is not well examined by the Justices when they take the Verdict, or when they have not well examined, or fully enquired of the issue joyned, &c.

And the Certificate ought to be sued in the same County where the Assise was sued, and may be sued before the same Justices before whom the Assise passed, or before other Justices. And if the King's Bench or Common Pleas be in the same County where the Assise passed, then the Certificate may be sued in the King's Bench or Common Pleas, if they be in the same County where the Assise passed.

21 E. 3. 3.
Br. Assise 63.
Vi. 32 Ass. 1.
One shall have a Certificate upon a Defeasance.
12 H. 4. 10.
41 Ass. 5.
Certificate was at the Common Law before Judgment.
Vi. 8 E. 3.
Fitz. Assise 412. Plow. Com. 92.

And that Certificate shall be a Writ directed to the Sheriff, and the Justices shall have a Patent made to them as they shall have in Assise, &c. And the form of the Patent made to the Justices shall be such:

Rex dilectis & fidelibus suis A. B. & C. salut. Quia super quibusdam articulis contingent. Assisam novae diff. q. inter A. & B. sum. fuit & capta coram vobis praef. B. & dilecto & fidei nostro I. apud N. per breve nostrum quaedam subsunt dubitationes, sicut ex querela ipsius A. accepimus, constituimus vos Justic. nostros, una cum his quos vobis associaverimus ad certific. inde capiend. Et ideo vobis praecipimus, quod ad certos diem & locum, quos ad hoc provideritis, certific. illam capiat, factur. inde quod ad Justic. pertinet faciend. salvis nobis amerciamentis, &c. Mandavimus etiam vic. nostro, &c. quod ad certos diem & locum, quos ei scire faciatis. jurat. illius ass. coram vobis venire faciat. ad certificand. vos super articulis praed. &c. In cujus rei testimon. has literas nostras fieri fecimus patentes. Teste, &c.

And the form of the Writ of Certificate is such:

Rex Vic. &c. Quia super quibusdam articulis contingent. Ass. nov. diff. quae inter A. & B. sum. fuit & capta coram dilectis & fidelibus nostris H. & R. apud N. per breve nostrum de tenent. in I. quaedam subsunt dubitationes, sicut ex querela ipsius A. accepim. constituim. praef. H. & R. vel sic, praef. H. & dilect. & fidei.

Writ of Certificate upon Assise sued.

fidel. nostrum L. Vel sic, dilect. & fideles nostros N. & S. Justic. nostros, una cum his quos sibi associaverimus ad certific. inde capiend. Et ideo tibi precipimus, quod ad certos diem & locum, quos præd. N. & S. tibi scire fac. jurat. illius ass. coram eis venire fac. ad certific. eos super articulos præd. & sum, &c. præd. B. quod, &c. coram, &c. ad audiend. illum certific. & habeas ibi nomina jurat. & hoc breve.

And that Writ lieth properly where the Verdict is not well examined. But if he appeareth by Bailiff to the Assise, and plead *Nul tort. &c.* and it is found against him where his Master hath a release to plead, and doth not plead it; then his Master shall have another form of Writ upon the Statute of *West. 2. cap. 15* and the Writ shall be such:

Rex dilect. & fidel. suo I. & sociis suis Justic. &c. Cum in Statuto edito apud Westm. contineatur, quod si def. contra quem transierit Assisa in sua absentia ostendat cart. vel quiet. claim. super quarum confessione non fuer. juratores examinati, nec examinari potuerint, pro eo quod non fiebat mentio de eis in placitand. & probab. ignorari poterint confect. hujusmodi scriptorum. Justic. visis script. illis faciant sciri parti que recuperavit, qd. sit ad certum diem, & venire faciant jurat. ejusdem ass. Et si per veredictum jurator. vel forte per irrotulament. script. ill. verificatur. puniatur ille qui assis impetravit cont. fact. suum per certam penam in statut. præd. content. Ac ex querela E. accepimus, qd. I. nuper arrainavit quand. assisam no. diff. per breve nostr. versus præf. E. & alios, &c. de tenementis in S. que quidem assisa in ipsius E. & aliorum absenc. transivit ut dicitur, ac idem E. quoddam scriptum quiet. claim. præfat. I. habeat de tenement. præd. super cujus confec. jurat. non fuer. examinati, nec examinari potuerunt, pro eo quod non fiebat inde mentio placiti: Vobis mandam. quod viso scripto ill. eidem E. in promiss. debitum & festinum justic. complement. fieri fac. juxta form. Stat. præd. T. &c.

And that Writ is as a Patent made to those Justices, and upon that they award a Certificate to the Sheriff, to warn the party to cause the Jurors in Assise to come before them. And that Patent or Commission is commonly made to other Justices, as unto the Justices before whom the Assise passed, and the same appeareth by the words of the Patent or Commission.

But by the Statute of *West. 2. cap. 25.* appeareth, That if the Bailiff of the Defendant do alledge a Record in Bar of the Assise, the Justices may take the Assise notwithstanding that Plea of the Bailiff, and give Judgment upon the Verdict, &c. But then the Defendant in the Assise may come to the Justices, and shew that he hath matter of Record to bar the Plaintiff in the Assise, &c. That at another time he barred the

the Plaintiff in the like Assise, brought by him against the Defendant; Or that there is a Writ of higher nature depending between them for those Lands; and then he ought to sue forth a Writ, to cause the Record to be brought before the Justices before whom the Assise passed, and thereupon when the Record cometh before them, if they perceive that the Record shall be a Bar in the Assise, then the said Justices shall award a special Writ of *Scire facias* out of the Record of the Assise, to warn the party to be before them, &c. and if he cannot deny it, nor avoid it, then the Defendant shall recover his seisin again, and double damages, and the Plaintiff in the Assise shall be imprisoned at the discretion of the Justices. And if the Defendant in the Assise have not any Record to shew, but a Release, or other matter in writing, which might bar the Plaintiff who recover'd in the Assise; then if the Defendant shew those writings to the Justices, before whom the Assise was taken, the Justices thereupon may award a special Writ of *Certificate* directed to the Sheriff that he summon in the party, and that he cause the Jurors in the first Assise, &c. to try that matter, &c. And if it be found for the Defendant, then the Plaintiff, who recover'd by the Assise, &c. shall lose double damages, and shall be also imprisoned at the discretion of the Justices, as appeareth by the said Statute.

B But whether the Defendant shall sue a special Patent to the same Justices, to proceed as the Writ aforesaid is, or that they shall proceed and award a special Certificate, upon the matter in writing shewed them by the Defendant hath been a question, because by the Judgment in the Assise, and execution awarded, their authority by *commission* is determin'd as some say. But I conceive that the Statute is a Commission and Patent sufficient to give authority to them to award a special Certificate to warn the party, and to cause the Jurors of the Assise to appear before them upon the matter in writing shew'd unto them, altho' Judgment be given in the Assise and Execution be past, for if there be such matter, then their authority remaineth to punish the Plaintiff for his Suit, and to restore the Defendant again unto his possession, by virtue of the Statute as I conceive.

C And if a man loseth in an Assise by default where he pleadeth by Bailiff, where he hath matter in writing not shewed to the Jurors, he may sue a Certificate upon that matter before the Justices, at the next Assise following, or before the Justice of Assise, or before the Justices of the King's Bench, or before the Justices of the Common Pleas, and the form of the Writ is such:

Writ of Certificate upon Assise sued.

Rex Vic', &c. Quia, &c. ut supra, (ulque ibi,) accepim. Tibi precipimus, quod juratores illius Ass. venire facias coram Justiciar. nostr. ad prim. Assisam, cum in partes illas venerint, ad certificand. eos super articul. præd. & sum. &c. præd. B. quod sit ad præfat. Assisam coram præfat. Justiciar. ad audiendum illam certifice.

And if the Certificate be sued before the Justices of the Common Pleas, then the Writ is such :

Rex Vic', &c. Quia, &c. ut accepimus : Tibi precipimus, quod juratores illius ass. venire facias coram Justic. nost. apud West. tali die ad certificand. eos, &c. ut supra.

And if the Certificate be sued before the King, then the Writ is as above :

Tibi precipim. quod jurator. illius ass. venire fac', &c. coram nobis apud E. die sabbati, &c. ad certificand. nos, &c.

If a man in *Assise* brought against him pleadeth a release, D or other matter in writing in bar of the *Assise*, and the Plaintiff doth deny the same, by reason whereof the same doth remain in the keeping of the Chief Justice of the *Assise*; and afterwards a new Commission is made to the Chief Justice, and to other persons, to take all *Assises* which remain to be taken in that County, for which cause they award a re-attachment against the Deft. and a Re-summons against the Jurors; the Deft. may come and plead the Release or writing which is in the keeping of the Chief Justice, which was denied, &c. And thereupon the Chief Justice shall have day until the next *Assises*, to bring in the writing; and if before the next *Assises* the King's Bench be removed to that County, and that Record of the *Assises* is come into the same Court, and the Deft. is re-attached and appeareth not, but maketh default, for which the *Assise* passeth for the Plaintiff, &c. and that release not pleaded nor shewed, the Defendant shall have a special Writ to the said Justice, in whose custody the release or writing is, to send the same into the King's Bench, and thereupon the Defendant shall have his Certificate out of the King's Bench, against the Pl. upon that matter, and such Writ is in the Register.

If a man sue a Certificate, he may have a Writ of Asso- A ciation upon that Writ, as in an *Assise of Novel Disseisin*, and also a Writ of *Si non omnes*, as well as he shall have in *Assise of Novel Diff.*

And a man may sue the Certificate before the same Justi- B ces, before whom the *Assise* passed, and then the Certificate shall issue out of the Rolls of the same Justices; But he may sue his Certificate before other Justices if he will, and then

then the Writ and Patent shall issue out of the Chancery.

C And if some of the Jurors be dead, yet it seemeth reasonable that he have the Certificate; and that it be tried by those who are alive, and by others, &c. for that is a new matter upon which they were not charged before, but see that matter debated. H. 7 H. 4 H. 12 H. 4. and 32 E. 3. lib.

D Ass.

Anno 43 E. 3. It appeareth that a man shall have a Certificate before Judgment given in the Assise as well as after Judgment given.

E And a man shall have a Certificate upon an Assise of Darrein presentment, or an Assise of Mortdauncestor, or Juris Utrum; and it is reason that a man have a Certificate upon an Attaint, if it pass against him by default, where he hath matter to bar the attaint by release or other writing, &c.

F And if the Record of Assise be removed into the Common pleas, the Party may sue a Certificate in the Common Pleas before the Justices there, although the Assise be raken of

G Lands in another County: See title Process, H. 33 H. 6.

And the Process in a Certificate is Summons against the Jury, and the Venire facias against the Party, &c. and after a Distress.

H And Nisi prius shall be granted in a Certificate, if the land be in another County than where the Certificate is brought

7 H. 4. 45. ac.
33 H. 6. 20.
21. nota, Ca-
pe pro fine
was award-
dependent
the Certifi-
cate of As-
sise.

Writ of Assise of Nufance.

I Assise of Nufance lieth where a man levieth a Nufance to my Freehold, which I have for life, in tail, or in fee-simple; then I shall have the Writ to redress the Nufance.

K And if that the Nufance be done in one County, and the Land to which the Nufance is done in another County, then he ought to sue several Writs of Assise of Nufance, to each Sheriff a Writ, and a Patent made to certain Persons to be Justices in that Assise, as it shall be in Assise of Common Pasture, or Turbary, or Rent, or the like: and the form of the Writ is such:

Land, the Feoffee shall not have Assise, because it was before his Interest, but the Tenant shall answer to the Nufance, as well before his time as after, 29 Ass. 9.

4 E. 3. 36. &c.
5 E. 2. 43.
Fitz. Nufan.
12.

4 Ass. 3. If
Nufance be,
and after he
to whom the
Nufance is
alien the

Rex Vic', &c. Questus est nobis A. quod B. injuste & sine judicio exaltavit quoddam stagnum in C. in com. tuo ad nocumentum liberi tenementi sui in L. in com. H. post primam transfretationem, &c. Et ideo precipimus, quod si præd. A. fecerit te securum de clamore suo prosequend. tunc. fac. 12 liberos & legales homines de

H h 4

wijn,

Writ of Assise of Nufance.

visn. illo videre stagnum illud, & nomina eorum imbreuiar, &c.

And in the other Writ which shall be directed unto the Sheriff where the Land is, to which the Nufance is, he shall say in the Writ, *Videre tenementum illud.* So that the Jurors where the Land is shall see the Land, and the Jurors in the other County shall see the Pool where the Nufance is done.

And moreover he shall say in the Writ, *Et nomina illorum imbreuiar. Et sum. eos per bonos sum. quod sint coram dilectis & fidelibus nostris R. & F. & his quos sibi associaverimus ad certos dies, & locum in consinio com. præd. quos idem, &c. parati, &c.* And the form of the Patent is such :

Rex dilectis, &c. Sciatis quod constituimus vos Justiciarios M ad ass. capiend. quam B. arratavit coram vobis per brevia nostra versus N. de quodam stagno exaltato in C. in com. S. ad nocumentum liberi tenementi sui in L. in Comitatu H & ideo, &c. quod ad certos, &c. in consinio com. præd. quos ad hoc provideritis, assisam illam capiatis, factur. quod ad justitiam pertinet, salvois, &c. Mandavimus enim Vic. nostris in com. præd. quod ad certos diem & locum in consinio com. præd. quos ei scire fac. assisam illam coram vobis venire fac. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.

21 E. 3. 22.
20 E. 3. 18.
16 E. 3. Fitz.
Nufance 3.
Vi. 11 H. 4.
25. It shall
be brought
in Consinio
Comitatus.

And man shall have the like Writ, If a man have a way to N his land or house, and another stop the way, he shall have an Assise of Nufance for that stopping; and if the way be in one County, and the land to which the way is, in another County, Then he shall have two Writs of Assise of Nufance, to each County one, and a Patent made to certain persons, as is afore said; and the form of the Writ is such :

Rex, &c. Questus est nobis A. quod B. injuste & sine judicio arctavit quandam viam in B. in com. tuo, ad nocumentum liberi tenementi sui in C. in com. H. post primam, &c. & interim fac. 12, &c. videre viam & nomina, &c. Et sum. &c.

And unto the Sheriff where the land is to which the way belongeth, the Writ is: *Quare arctavit quandam viam in B. in com. C. ad nocumentum liberi tenementi sui in S. in com. tuo post primam, &c. Et ideo tibi præcipimus, &c. videre tenement. & nomina eorum imbreui. & sum. &c. ad certos, &c. in consinio com. præd. quos idem, &c. And the Patent is such :*

Rex dilectis, &c. Sciatis, &c. ad ass. capiend. quam, &c. per brevia nostr. &c. de quadam via arctat. in B. in com. Bedford. ad nocumentum, &c. in C. in Comitatu Hunt. & ideo, &c. (ut supra.)

And a man shall have a Writ of Assise, *Quare injuste & sine judicio levavit vel prostravit quoddam fossatum in N. ad nocumentum liberi tenementi sui in N. vel levavit, vel prostravit, vel exaltavit, vel de exaltavit quoddam stagnum, &c. vel ob-*
[184] *struxit*

struxit
levavit
vel a
B. pos
ræ u
illam
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fruxit, vel arctavit quandam viam in N. ad nocument. &c. vel levavit, vel prostravit quandam sepem in N. ad nocument. &c. vel divert. cursum aque in N. ad nocument. liber. tenement. sui in B. post primam transfretat. &c. (ut in affisa de communia pasturæ usque ibi) de visn. illo videre fossat. illud, stagnum illud, sepem illam, viam illam, cursum aque illius, & tenement. & nomin. eorum imbrevari & sum. &c. (ut supra in com. pasturæ) and the form of the Patent is :

Rex dilectis, &c. Sciatis, &c. ad affisam capiend. quam A. &c. 48 E. 3. 17. versus B. de quodam fossato levato vel prostrato in N. vel de quodam stagno exaltato vel de-exaltato in N. vel de quodam stagno levato vel prostrato in N. vel de quodam sepe levata vel prostrata in N. vel de quodam via arctata vel obstructa in N. de cursu cujusdam aque diverso in N. Et ideo vobis mandamus, &c. (ut sup.)

A And for what an Affise of Nufance lieth, appeareth by these Verles.

fatum, num, s, a,
Fos stag sepe vi diversi cursus aquarum,
i. terminari eorum Justic. assisar. i. placitari in Banco
Poscunt affisam : mercatum, feria, bancum.

And it appeareth by these Verles, to set up a Fair or a Market unto the Nufance of another Fair or Marker, that he unto whose Nufance that Fair or Market is set up, shall have a Writ for so doing returnable into the King's Bench : and the Writ shall be in such form : 11 H. 4. 47

Rex Vic. &c. Si A. fecerit, &c. tunc sum. &c. P. quod sit eorum Justic. nostris apud West. &c. ostens. quare levavit quoddam mercatum vel quoddam feriam in I. ad nocumentum liberi mercati, vel libera ferie ipsius A. in eadem villa, vel in alia post primam transfretationem, &c. ut dicit, & habeas ibi sum. & hoc breve.

There is also another form of Writ for the same which is a Quod permittat, which is such :

Rex Vic. &c. Præcipimus P. quod juste, &c. permittat Episcopum Lincoln. prosternere quoddam mercatum in Uppingham quod P. de M. pater præd. P. cujus hæres ipse est, injuste, &c. levavit ad nocument. liberi mercati C. nuper Episcopi Lincoln. prædecess. præd. Episcopi in Luddington, ut dicit, & nisi fecerit, & præd. Episcop. fecerit te securum, &c. tunc sum. præd. P. qd. sit, &c. ostens. quare, &c.

And that Writ was granted by the chief Justice and Clerks of the Chancery, by which it seemeth, that a man may disturb another to have or keep any Fair or Market unto the Nufance of his Fair or Market.

Writs of Nufance which are Vicontiel.

By the Statute of 6 R. 2. the Plaintiff may choofe to have it before the Juftices, or the Sheriff, Register, 199.

WRits of Nufance which are Vicontiel, are thofe which do appear by the Verfes following,
rica ca gultum ges lendinum
Fab fur porta, domus, vir gur mo
murus, ovile,

Et Pons, tradantur hæc vicecomitibus.

And the form of the Writ is fuch: *Rex Vic', &c. Quest. eft nobis A. de B. qd. B. injufte levavit vel prostravit quandam dom. vel obstruxit quandam gurgitem in N. ad nocumet. &c. in eadem villa vel in alia post prim. transfrætationem, &c. in Vasc. Et ideo tibi præcipimus, quod loquelam illam audias, & postea eam inde juſte deduci fac. ne amplius inde clamorem audiamus pro defectu juſtitie.*

After the ſame manner are Writs, *de ovili, porta, virgulto, molendino, Latpina & ſimilibus Locatis vel prostratis.* And thoſe Writs may be removed at the ſuit of the Plaintiff or Defendant out of the County into the Common-Pleas by a *Pone*, with cauſe ſhewed in the Writ, as in a *Replevin* of his Cattel; and the *Pone* is ſuch:

Rex Vic', &c. Pone ad petitionem petentis loquelam quæ eſt in com. tuo per breve noſtrum inter A. & B. de quadam domo levat. vel prostrat. in C. per ipſum B. injufte levat. vel totalit. prostrat. ut dic. & ſum. &c. ut in pone de averiis.

Register, 199.

And the Rule in the Register is, That if he who erected or throweth down a Houſe, Wall, or the like, dieth, that he to whoſe Nufance it is, or his Heir, ſhall have a *Quod permittat* againſt his Heir who did the Nufance, which Writs are amongſt the Writs of *Quod permittat*.

18 E. 3. 22. And a man ſhall have an *Aſſiſe* of Nufance for building of D
 Nufance 1. a Houſe higher than his Houſe, and ſo near his, that the rain which falleth upon that houſe, falleth upon the Plaintiff's houſe.

4 E. 3. Fitz. And a man ſhall not have an *Aſſiſe* of Nufance of a way, E
 Nufance 1. if it be not appendant or appurtenant to his Freehold, as if a man build a Houſe over the way which I have to my Houſe, or to the Church, I ſhall have an *Aſſiſe* of Nufance.

46 E. 3. 23. And in a Writ of Nufance, the Defendant ſhall have the F
 50 E. 3. 12. View, and ſhall be eſſoynd; and if afterwards he make default, a diſtreſs ſhall be awarded againſt him for to answer, &c. and not ſave his default. P. 42 E. 3. 9.

[185] And if a man levy a Nufance unto the Houſe of another G
 who hath therein an Eſtate but for term of years, then he ſhall not have an *Aſſiſe* of Nufance, but an Action upon the Caſe

Case against him, because he hath no Freehold : but yet it seemeth he may enter and abate the Nuisance.

A And if a Writ of Nuisance be removed out of the County, and the Sheriff return, that the Defendant hath not any thing, &c. the party shall have Attachment, Distress, and no other process, &c. because it toucheth Freehold. But in an *Affise* of Nuisance : the Process is as in *Affise of Novel Disseisin*. But his Lessee shall have, 13 H. 3 Fitz. Aff. 437.

B And the Parishioners may pull down a Wall which is set up to their Nuisance in their way to the Church, *quod Vi. 6 E. 2.*

C And in an *Affise* of Nuisance he may in his Plea shew the Nuisance to be divers Freeholds.

D And if the Ways be straitned, or the Allies or Lanes in any Town, City or Borough Corporate be filled with filth or dung, or such things by which means infection may increase, then he who will sue may procure such Writ to have them cleansed and made clean ; and the Writ is such :

Rex Majori & Ballivis suis Oxon. salutem. Quia ex testimonio accipimus fide digno, quod per fimos & fimaria, necnon porcarias, & frequent. access. porcorum, ac plures alias feditates, que in vicis & venellis villæ prædictæ. & suburb. ejusdem existunt, aer ibidem in tantum corrumpit. & inficit, quod magistris & Scholaribus in eadem commorant. & aliis ibidem conservantibus & transeuntibus horror abhominabilis incutitur, commoditas salubris aeris impeditur, status hominum graviter leditur, aliæq; intolerabiles incommoditates, & quamplurima discrimina ex corrupt. hujusmodi provenire noscunt. in magistror. & Scholarum prædictæ. & aliorum ibidem conversant. & transeunt. nocuent. & vitæ suæ periculum manifestum. Nos nolentes hujusmodi defectus enormes, & intolerabiles ibidem ulterius sustiner. Vobis præcipimus, quod omnes vicos & venellos in villa prædictæ. & ejus suburb. de fimis & fimariis, ac aliis feditatibus prædictæ. mundari, & mundatos imposterum conservari sine dilat. aliqua faciatis, ne per corruptiones aut feditates præd. damnum seu periculum aliquibus in vestri defect. eveniat in futurum per quod ad vos tanquam ad mandati nostri contemtores graviter capere debeamus, Teste, &c.

And upon that he shall have an *Alias*, a *Pluries*, and *Attachment*, if they do not cleanse them, &c. But for Villages in the County which are not corporate, such Writ doth not lye.

Writ

*Writ de Association in Assise, and of Writs de
Si non omnes.*

16 Aff. 6.
Assise 206.
Note, there
is one *Si non
omnes*, gene-
ral, which

is entred of Record, and remains with the Justices for their Warrant to take other
Assises; and the special, *Si non omnes*, is annexed to the Record, and sent as parcel.

A Writ of Association is a Patent made to one or more, when an Assise of Novel Disseisin, or Certificate upon Assise of Novel Disseisin is sued. Then the King of his own Motion, or the Plaintiff may sue to have other persons associated unto the Justices of Assise to take that Assise; and the form of the Writ or Patent is such:

Rex dilectis & fidelibus suis C. & D. Vel dilecto & fideli suo F. sal. Sciatis quod associavimus vos vel alterum vestrum, vel vos dilect. & fidelibus nostris A. B. & G. ad ass. nove diff. capiend. quam E. arrainavit coram pref. A. B. & G. per bre. nostrum versus H. de ten. in N. ita tamen quod si ad certos diem & locum quos iidem A. B. & G. ad hoc providerint vel alterum vestrum vel vos adesse contigerit, tunc vos vel alterum vestrum vel vos ad hoc in socios vel in socium admittant, alioquin iidem A. B. & G. non expectata presentia vestra vel alterius vestr. vel vestra, ad captionem illius ass. procedant. Et ideo vobis mandamus quod vos vel alter vestr. vel vos captioni ass. illius una cum pref. A. B. & G. intendat. in forma preed. fact. inde quod ad iustitiam pertin. secundum legem & cons. regni nostri: salvis nobis amerciam. inde provenient. Mandam. enim eisdem A. B. & G. quod vos vel alterum vestrum vel vos ad hoc in socios vel in socium admittant, sicut preed. est. in cuius rei testim. has literas, &c.

And upon that Patent of Association the King shall send his Writ unto the Justices of Assise, commanding them thereby to admit him or them, &c. and the Writ is such:

Rex dilect. & fidelibus suis A. B. & G. salut. Sciatis quod associavimus vobis dilect. & fideles nostros G. & D. vel alterum ipsorum, Vel sic, dilect. & fidel. nostrum F. ad ass. nove diff. capiend. quod E. arrainavit coram vobis per bre. nostrum versus H. & alios in brevi nostro originali content. de tenement. in N. vel de commun. pasture in N. ita tamen quod si ad certum diem & locum, quos ad hoc provideritis, ipsos C. & D. vel alterum ipsorum: Vel sic, ipsum F. ad hoc in socios vel in socium admitt. alioku. vos non expectata presentia eorum C. & D. vel alterius ipsorum: Vel sic, vel ipsius F. ad captionem illius ass. procedat. Et ideo vobis mandamus, quod

See for the
Exposition
of (alter)
Dyer 310.
338.

L. 5 E. 4. 11.
Br. Assise
386.

quod ipso C. & D. vel alterum ipsorum : Vel sic, vel ipsum F. ad hoc in socios vel in socium admit. in form. præd. Mandavimus enim eisd. C. & D. quod ipsi vel eorum alt. Vel sic, vel idem F. quod una vobiscum ad hoc intendant vel intendant, sicut prædict. est. Teste, &c.

F And if several Assises, or Certificates of Assises be sued before several Justices in one County for Lands, Tenements, Rents or Commons, and afterwards the King maketh new Justices to take all Assises or Certificates, and Juries which are to be taken in the same County, the King may make an Association to the Justices new assigned ; thus :

Rex dilect. & fidel. suis W. de D.R. de A. & R. de P. Salut Sciatis quod cum constituerimus vos Justic. nostros ad omnes ass. jurat. & certif. coram quibuscumq; Just. nostris per brevina nostra in com. Linc. arratatas capiend. Et postmod vobis mandaverimus, quod si vos omnes cap. ass. juratam, & certif. præd. commodè interesse non possitis, tunc duo vestrum quæ præsentès esse contigerit, ad captionem earundem ass. juraturam, & certif. secund. legem & consuet. regni nostri procederitis, associavimus vobis dilect. & fidel. nostr. A. ad ass. juratis & certif. præd. una vobisc. capiend. ita tamen quod si ad cert. dies & loca, quos vos vel duo vestr. ad hoc provideritis, ipsum A. adesse contigerit, tunc vos vel duo vestrum ipsum A. in socium admittat. alioquin vos vel duo vestr. non expectat. præsentia ipsius A. ad captionem ass. juratarum & certif. prædict. procedatis, & ideo, &c. mandamus, &c.

[186]

And a Patent made to him who shall be Associate, reciting the Patent made to the Justices, and the Writ of Si non omnes, and then shall say, Associavimus vos, &c. And the form of the Writ is such :

Rex dilect. & fidel. suo A. salut. Sciatis quod cum constituerimus dilect. & fidel. nostros W. de D.R. de A. & R. de P. Just. nostros ad omnes ass. jurat. & certif. coram quibuscumq; Justic. nostris per brevina nostra in com. Linc. arrain. capiend. & postmod. eisdem W. de D.R. & R. mandavimus quod si ipsi omnes captioni ass. jurat. & certif. præd. commodè interesse non possint, tunc duo eorum, quos tunc adesse contigerit ad captionem earundem ass. jurat. & certif. secund. legem & consuet. regn. nostri procederent, associavimus vos præf. W. R. & R. & duobus eorum ad ass. jurat. & certif. præd. in com. præd. capiend. ita tamen quod si ad certos dies & loca quos iidem W. R. & R. vel duo eorum ad hoc providerint, vos adesse contigerit, tunc ipsi vel duo eorum vos ad hoc in socium admittant, alioquin iidem W. R. & R. vel duo eorum non expectata præsentia eorum, ad captionem earundem ass. jurat. & certif. prædict. proced. & ideo vobis mandamus, quod captionem ass. jur. & certif. præd. una cum præf. W. R. &

& R. vel duobus eor. intendatis in form. præd. facturi, &c. salvo, &c. Mandamus etiam eisdem W.R. & R. quod ipsi vel duo eor. vos ad hoc in socium admittant, sicut præd. est. In cuius rei, &c. has literas nostras fieri fecimus paten. Teste, &c.

L. 5. E. 4.
111. Br. Ass.
386.

And afterwards when the King hath made his Justices of Assise by Letters Patents; and by other Letters Patents hath associated unto them another Person, yet he is used afterwards to make other Letters Patents, as well unto the Justices of Assise, as to those whom he hath associated unto them, that if they all do not come at one time, to take those Assises, Juries, & Certificates, that then those who do come shall take the same Assises, Juries and Certificates: and that Patent is called a *Si non omnes*: and the form of the Patent is such:

Rex dilectis & fidel. suis W. de D. R. de A. & R. de P. & A. de B. salut. Cum constituerimus vos præf. W.R. & R. Justiciarios nostros ad omnes ass. &c. (usque ibi) arrain. capiend. & postmod. vobis præf. W.R. & R. monstraverimus, quod si vos omnes, &c. procederitis subsequen. quod associamus vobis & duobus vestrum præf. A. ad ass. jurat. & certifice. præd. in com. præd. capiend. vobis mandam. quod si vos omnes captioni ass. jurat. & certifice. præd. commodo interesse non possitis, tunc tres vel duo vestrum, quorum alterum vestrum vos præf. W.R. & R. unum esse volumus, ad captionem earund. ass. &c. secundum legem & cons. regni nostri procedatis, &c. Teste, &c.

And these three Patents next before are commonly made when any Assise is sued; as one to the Justices of Assises, and another Patent to the Clerk of the Assises of Association, and the Patent of *Si non omnes*, as well made to the Justices and the Clerk of the Assises together.

And if the King make his Justices of Assise in any County, and afterwards he maketh an Association to them, and a Patent of *Si non omnes*, &c. And afterwards divers Assises or Certificates of Assises remain before them not determined. The King at the next Assises may make a new Commission unto other Justices to take all those Assises and Certificates, and may make a new Association unto them by another Patent, and a *Si non omnes* also directed unto them.

32 H. 6. 10. But a general Patent of Assise to take all Assises and Juries, &c. and Association lyeth. But *M. 32. H. 6.* it is holden; that an Association after another Association allowed and admitted doth not lye, nor that the Justices then do not admit other Association in that Writ afterwards, so long as that Writ and Commission stand in force.

L. 5 E. 4.
Br. Assise
386.

But in a special Assise no Association shall be made as it is holden the same year. *M. 32. H. 6.* for he hath not in the Writ

Writ these word, *Et his quos sibi associavimus*. But the Writ is directed to the Sheriff without those words in the Writ, nor those words are not in the Patent made to the Justices of that special Assise.

F But if those words be in the Writ, and in the Patent made to the Justices, then it seemeth an Association shall be made in that special Assise, as in other. And it appeareth in the Regist. that other Assoc. lieth after Association in one Writ.

G And upon a new Commission made to other Justices, that old Justices of Assise shall deliver their Records of the Assise unto the new Justices by Indenture, upon a Writ directed to them to deliver the Records.

H And a man may sue a Patent of Association for several Assises, and the form of the Writ is such :

Associavimus vos, vel alterum vestrum, &c. ad Ass. no. diff. capiend. quam A. arrainavit cor. pref. &c. de tenementis in N. & ad ass. no. diff. capiend. quam C. arrain. cor. eisd. &c. versus pref. B. de tenementis in eadem villa, Ita tamen quod si, &c.

A And if the King make two men his Justices of Assise in one County, and afterwards one of them is elsewhere in the Kings Service, so that he cannot intend to take those Assises or Juries, then the King by his Patent may make another Justice in his Room, to take those Assises and Juries, and that Patent is in the nature of an Association; and the form of the Writ is such :

Rex dilecto & fidei suo A. salut. Sciatis qd. cum nuper constituer. vos & dilect. & fidelem nostrum G. Just. nostr. ad omnes ass. juratas, & certifice. cor. quibus c. Justiciar. nostris per brev. nostra in Comitatu L. arrain. capiend. ac pref. G. quibusd. obsequiis nostris de mandato nostro alibi intendat, per qd. captioni earund. assisar, jurator. & certificar. vacare non potest, ut accepimus, loco ipsius G. Yet he is constitutum. dilect. & fidel. nostr. W. Justic. nostr. ad assisas, juratas, Judge before they admit him, by Markham, L. 5. F. 4. III. Br. Ass. 386.

And a Patent shall be made to him who shall be associate unto them in the place of G. which shall be such :

Rex dilecto & fidei suo W. salutem. Sciatis qd. cum nuper constituimus dilectos & fideles nostros A. & G. Justic. nostros ad omnes ass. &c. (ut supra usq; ibi) ut accepimus, loco ipsius G. constituimus vos Justic. nostr. ad ass. jurat. & certifice. pred. una cum pref. A. capiend. Et ideo vobis mandamus, qd. loco ipsius G. cum pref. A. ad hoc intendat. in forma pred. facturi, &c. salvo, &c. Mandavimus enim eidem R. qd. vos loco ipsius G. ad hoc in socium admittat, sicut pred. est. In cujus, &c.

And

And of Association unto another to associate him and the two in the room of him who is dead, and a close Writ shall be directed to the two Justices who are alive to admit him, and it appeareth by the Writ, that if the King maketh three Justices to take Assises, and make them a Patent of *Si non omnes*, that if one of them dieth, yet the other two may proceed; and the Patent is such:

L. 5. E. 4. III
Br. Assise
286.

Rex dilecto & fideli suo I. de O. salutem. Sciatis quod cum nuper constituerimus dilectos & fideles nostros G. I. & S. Justic. nostr. ad omnes ass. jurat. & certific. coram quibuscunque Justic. nostr. per brev. nostra in Comitatu S. &c. arrain. capiend. ac post mortem præd. S. divers. ass. jurat. & certific. coram præfat. I. & I. arrain. existant, nos certis de causis constituimus vos Justic. nostr. tam ad omnes ass. jurat. & certific. coram quibuscunque Justic. nostr. in com. præd. arrain. una cum eisdem I. & I. capiend. Et ideo vobis mandamus, quod ad ass. jurat. & certific. una cum præfat. I. & I. capiend. attendat. in forma præd. fact. &c. salvis. Mandamus enim prædict. I. & I. quod vos ad hoc in socium admitt. sicut præd. est.

And a close Writ shall be directed to the Justices to admit the said Justice *W.* into their Society.

And the King may make association in Juries as well in Assises, as also in Attraints. And if the King make a Commission to take an attainr or other Jury, and an Association in the same, and after one of the Justices dieth, the King may make a new Association in the same Writ, and so he may make one Association after another in the same Writ, as appeareth by the Register; and the Writ is such:

Rex dilect. &c. I. de M. R. de M. & I. de F. salutem. Cum nuper constituiſſemus W. de O & vos præfat. I. de M. & R. Justic. nostr. ad jurat. 24. milit. capiend. quam R. arrain. coram præfat. W. & vobis præf. I. de M. & R. per breve nostr. versus P. ad convincend. jurator. ass. no. diff. qua inter ipsum P. & præf. R. sum fuit, & capta per breve nostrum apud H. coram præf. W. & vobis præf. R. de tenem in S. in com. N. & postmodo per breve nostr. associaver. vobis præf. I. de M. & R. vos præf. I. de F. ad omnes ass. jurat. &c. in dicto com. arrain. una cum præf. W. & vobis cum præf. I. de M. & R. vel duobus vestrum cap. & jurat. ill. coram præf. W. & vobis præf. R. & I. de F. virtute association. præd. usq; ad caption ejusdem extiterit per placitat, ac idem W. iam diem clausit extrem. loco ipsius W. constituimus dilect. & fidel. nostr. B. ad jurat. illam una vobiscum capiend. Vobis mandamus, quod præf. B. loco ipsius W. ad hoc admittat. & ad jurat. illam capiend. una cum ipso procedatis secundum legem & consuetudinem regni

regni nostri Mandamus enim pref. B. quod una vobiscum ad hoc intend. sicut predictum est.

And thereupon another Patent shall be made to the said B. of association, as before in other Cases.

D And an association may be made unto the Sheriff upon a writ of Redisseisin directed to him as well as it may be upon an Assise of Novel. diff. as appeareth by the Register; which Writ was awarded by W de Harloston.

Furby 2 H.
4. 2. he is
Officer,
Judge and
Commissioner in this
Writ.

A And altho' the Assise be discontinued for not coming of the Justices, &c. yet when the Reattachment is sued, the writs of association, and of Si non omnes stand in force; and a Reattachment shall or may be sued to revive those Assises, altho' there be several adjournments of the Assises, yet the associations and writs of Si non omnes shall serve for all the Assises.

12 H. 4. 19;
20.
L. 5. E. 4. 111.
Br. Assise.
386. 14 Ass.
15. Br. Ass.
196.

Writ of Redisseisin.

B THe writ of Redisseisin lieth where a man doth recover by Assise of Novel Disseisin, Land, Rent or Common, & the like, and is put in possession thereof by Verdict and afterwards he is disseised of the same Land, Rent or Common by him by whom he was disseised before. Then he shall have this Writ upon the Stat. of Merton, c. 3. and the form of the writ is such:

C Rex Vic', &c. Monstraver. nobis A. & B. uxor ejus, quod cum R. quondam vir ipsius B. & ipsa B. in Curia nostra coram. Justic. nostr. ultimo itinerantibus apud N. in Comitatu tuo. Vel sic, coram dilect. & fidelib. nostr. H. & K. Justic. nostr. ad ass. in Comitatu præd. capiend. assign. apud. Vel sic, si Justic. mort. fuer. coram H. & sociis suis nuper Justic. nostr. ad ass. in Comitatu præd. capiend. assign. apud N. recuperassent seisin. suam versus S. de vigint. acr. terræ, & decem solidat. reddit. cum pertin. in K. pro recognit. assise novæ diff. inter eos, &c. Vel sic, inter præf. A. B. & S. capt. præfat. S. ipsos A. & B. de præd. terra & redditu. Vel sic, de una acra terræ de terra præd. iterum injuste disseisivit: Et ideo tibi præcipimus, quod assumpt. tecum custodib. placitorum coronæ nostræ & 12 tam militib. quam aliis liberis & legalib. hominib. de Comitatu tuo de illis qui in prima jurata fuer. quam aliis, in propria persona tua acced. ad præd. terram & tenementum, unde reddit. inde provenit, & per eorum sacramentum diligent inde fac. inquisit. Et si ipsos A. & B. per præfat. S. de præd. terra & redditu iterum injuste disseisitos inveneris, tunc ipsum S. capias & in prisona nostra salvo custodiri fac. ita quod a prisona illa nullo modo delib. beretur sine mandato nostro speciali: & ipsos A. & B. de præd. terra, & redditu reseisir. & damna sua in duplum, quæ occasione

Writ of Redisseisin.

illius redisseis. sustiner. per sacramentum præd. 12. taxari, & de terris & catall. præd. S. in balliva tua sine dilatione fier. & eisdem A. & B. habere fac. juxta formam Statuti de hujusmodi redisseis. provis. Et scire fac. præf. S. & D. qui terram illam nunc tenet, quod inquisit. ill. faciend. intersit, si sibi viderit expedire. Teste, &c.

And by that Writ appeareth, That a man shall have a *Redisseisin* against the Tenant, if he recover by Assise of *Novel Disseisin* before Justices in Eyre, or before Justices of Assise; and lo if he recover in Assise of *Novel Disseisin* in the King's Bench or Common Pleas, if he be redisseised, he shall have that Writ.

If husband and wife be disseised, and recover by Assise, and the husband dieth, and the wife taketh another husband, and they be disseised again, by the Register they shall have a Writ of *Redisseisin*, although the husband were not disseised before; and the Writ willeth that the Sheriff enquire whether they were disseised before, and so the husband was not: but that is not material, because it is the Right of the wife, and she was disseised before. But if the wife lose in the Assise of *Novel Disseisin*, and afterwards take husband, and they redisseise the Plaintiff, he shall not have a Writ of *Redisseisin*, *quod vi. H. 9 H. 4.*

And also a *Redisseisin* lieth against him who committed the *Redisseisin*, and against another who was not Disseisor, if he be Tenant of the Land.

And also if a man recover Land by Assise of *Novel Disseisin*, and after is redisseised of parcel of the same, he shall have a Writ of *Redisseisin*.

And in a *Redisseisin* against husband and wife, the Writ shall be thus in the end. *Et idem A. damna sua in duplum quæ occasione illius rediss. sustinuit de terris ipsorum B. & S. & catallis ipsius B. in ball. tua.*, because the wife hath not any Chattel.

And if the Sheriff will not execute the Writ of *Redisseisin*, he shall have an *Alias* and a *Pluries* directed to him, and if he then do it not, he shall have an *Attachment* against him to the Coroners, &c. and upon the same, distresses *infinite*.

And it appeareth in the Register, That a man shall have a Writ of Association in a *Redisseisin*, and the Writ is such:

Rex Vic', &c. Sciatis qd. cum nuper ad prosecut. N. nobis suggerent. ipsum in Curia nostra coram. &c. apud K. per breve nostrum recuperas. seisinam suam versus S. &c. recitando totum breve (ulque ibi) si sibi viderit expedire. associavimus tibi dilect. & fidel. nostrum K. ad præmis. recum faciend. & explend. ita tamen, quod si ad cert. diem quem ad hoc provideritis, ipsum K. ades. contigerit, tunc ipsum ad hoc in socium admitt. alioquin tu non expectata præsentia ipsius R. ad præmis. faciend. & explend. proced.

proced. Et ideo tibi præcip. quod ipsum R. ad hoc in socium admitt. in forma præd. Mandavimus enim eidem R. quod ad præmis. tecum faciend. & explend. intend. sicut prædictum est.

And by the Register, the Writ directed to the Sheriff shall be close, as also the other Writ directed unto him who is associated to him, and yet the same is in its nature a Patent.

L And if a man recover by Assise of Novel Disseisin Common of Pasture, or other profit appender in the Soil of another, or any Office, or Corody; if he be redisseised, he shall have a Redisseisin: and the Writ shall be such:

Rex Vic', &c. Monstravit nobis A. quod cum ipse in Curia nostra coram dilect. & fidel. nostr. W. & sociis suis Justic. nostr. ad assis. &c. assign. apud N. per breve nostrum recuperasset seisinam suam versus I. de communia pastur. in S. quæ pertinet ad liberum tenementum suum in eadem villa, per recogn. assis. novæ diss. ibi inde inter eos capt. præd. I. præf. A. de præd. communia iterum injuste disseisvit. Et ideo, &c. acced. ad pasturam illam & per eorum sacramentum, &c. de rationabil. estover. sic recuperasset seisin. suam versus I. de rationabil. estover. suis capiend. in tribus millib. acr. bosci cum pertin. in W. quæ pertinent ad liberum tenementum suum in eadem per recogn. assis. &c.

A And if a man recover by Assise of Novel Disseisin any Land or Tenement before the Bailiffs of any Liberty, where they demand Conufance of Pleas before Justices of Assise, and the Justices grant the same, because the Lands are within that Liberty, and afterwards he be redisseised of the same Land, then he shall have a writ of Redisseisin; and the writ shall be such:

Rex Vic. Berkf. salutem. Monstravit A. quod cum ipse nuper arrainas. quandam ass. no. diss. cor dilect. & fidelib. nostris I. & sociis, &c. assign. per breve nostr. versus P. de duobus pedibus terra in longitudine, & uno pede terræ in latitudine cum pertin. in W. quæ quidem assisa per eosd. Justic. in Cur. Abbat. de Reding. juxta libertates eidem Abbati per cartas progenitorum nostror. quondam regum Angliæ & confirmat. nostram concess. cor ball. ejusd. Abbat. returnata fuit placitand. ac idem A. seisinam suam de terra præd. versus præf. E. in ead. cur. recuperasset per recogn. ass. no. diss. ibi inter eos capt. præf. E. ipsum A. de præd. &c. iterum, &c. ut in primo brevi.

And also a man shall have a Redisseisin upon a recovery in Assise of Nulance, de stagno injuste levat. &c. or de cursa aquæ diverso, or de via arctata & obstructa; and the form of the Writ is such:

Rex Vic'. &c. Monstravit nobis A. &c. (usque ibi) assign. arrainaver. quandam assisam versus B. per breve nostrum de quodam stagno injuste levato in N. ad nocurneum liberi tenementi sui in K. & per recognit. ejusdem assise inde inter eos apud E.

Writ of Redisseisin.

capt. coram eisdem Justic. distringavit stagnum illud per præf. B. levatum esse prosternend. præd. B. stagnum illud iterum injuste & sine iudicio levavit: & quia hoc injustum est & manifestum contra pacem nostram: Tibi præcipimus, quod assumptis tecum, &c. (usque ibi) accedas ad stagnum illud & tenementum, & per eorum sacramentum diligenter inde fac. inquisitionem. Et si per inquisitionem illam inveneris quod prædict. stagnum illud iterum injuste levaverit, tunc ipsum B. capias, &c. (usq; ibi) speciali, & stagnum illud sine dilatione prosterni, & eidem A. damna sua ad duplum, quæ occasione illius redisseisin. sustinuit, &c. (usq; ibi) sine dilatione fieri habere fac. juxta form. &c. ut supra.

And the like writs are in the Register of Redisseisin, for the mis-turning of a Mill, or of a Way, or of an Office, and the like. C

And if the Sheriff do deliver any such without the special Command of the King, who are convict of such Redisseisins, he shall be grievously amerced, and notwithstanding those who are so delivered, shall be also grievously punished, &c. by the Statute of Marlebridge, cap. 8.

And by the Statute of Westm. 2. cap. 26. he who recovereth in a Redisseisin, shall recover double damages; and the Defendants shall not be bailed by a common Writ: and by the same Statute is given a Writ of Post Disseisin, in which writ he shall also recover double damages against the Defendant.

And if a man do recover by Redisseisin, and afterwards is disseised again by him by whom the first Redisseisin was before, he shall have new Redisseisin; and so one Redisseisin after another every time he is redisseised. D

And a Redisseisin shall be maintainable against any of the Disseisors. E

And if a man recover Land by Assise of Novel Disseisin unto which a Common is appendant, &c. and after he is disseised of the Common again, he shall have a Redisseisin, &c. F

And if a man sue a Writ of Droit Close, and make protestation in the nature of assise of Novel Diss. and recover in that writ, and after he is redisseised, he shall not have a Redisseisin: for that Writ doth not lie upon an Assise at the Common Law, M. 14. E 3. G

And if all the Jurors in the assise be dead but one, and afterwards he who recover'd is redisseis'd, &c. it is a question whether he shall have a Redisseisin, because that the Statute is *Per Primos Juratores & alios*, &c. which he debated in H. 8. 5. But it seemeth that the Statute makes the Law, and because it is a penal Statute, it shall be taken strictly; and therefore if all the Jurors be dead but one, that he shall not have a Redisseisin, because he cannot be tried by the former Jurors: H
for

for one Juror is not a sufficient witness himself, to say that it is a Redisseisin of the same Tenements; and therefore it seemeth there ought to be two Jurors to testify the same.

I And Tenant by Statute Merchant or Staple shall have an assise of *Novel Diss.* if he be ousted; and also a Redisseisin if he be redisseised.

And so Tenant by *Elegit* shall have an assise of *Novel diss.* and a *Redisseisin* if he be ousted, by the Stat. of *Westm.* 2. c. 18.

Writ of Post Disseisin.

C THE Writ of *Post Disseisin* is given by the Stat. of *West.* 2. cap. 26. and lieth where a man recovereth Lands or Tenements by a *Præcipe quod reddat*, by default or reddition, and afterwards he is ousted again by him against whom he recover'd, &c. Then he shall have that writ of *Post diss.* and shall recover double damages, and the party shall be punished as he shall be if he were attainted of Redisseisin; But if he recover by assise of *Mortdauncestor* or *Juris utrum*, or in those actions which pass by Juries and Verdicts, then he shall have his Writ founded upon the Statute of *Merton*, cap. 3. of *Post Disseisin*. And that Writ shall be directed to the Sheriff as the writ of *Redisseisin* shall be; and if the Sheriff will not execute the Writ as he ought to do, and as he is commanded, Then he may sue forth an *Alias* and a *Pluries unl causam nobis significes*, &c. and if that do not any thing, nor he return a *Caute*, Then the party may sue an *Attachment* against the Sheriff directed to the Coroners, &c. and upon that a Distress; and the form of the Writ of *Post Diss.* is such:

D
E
F
G
H
Rex Vic', &c. Monstravit nobis A. quod cum ipse in curia nostra coram dilectis & fidelibus nostris W. & sociis suis Justic. nostris de banco apud E. per breve nostrum recuperasset, seisinam suam versus I. de uno mesuag. cum pertin in S. per considerationem ejusdem cur. idem I. præfat. A. de prædicta terra postmodo injuste assisif. Et ideo tibi præcipimus quod assumptis, &c. (ut in breve de rediss. &c.) legalibus hominibus de Com. tuo accedas, &c. (usque ibi) de prædicta terra postmodo injuste disseisit. inveneris, tunc ipsum I. &c. (usque ibi) quæ occasione illius post disseis. sustinuit, &c. juxta formam statuti West. de hujusmodi post disseisinam provisi, & scire fac. præfat. I. quod inquisitio, &c.

And in a *Post. Diss.* the Writ shall not say, *Tam de illis qui in prima jurata*, but in case where he recovereth by recognizance of the Assise, or Jury.

Writ of Post Disseisin.

And if a man recover Lands or Tenements in value against the Vouchee in a *Præcipe quod reddat* by default, and afterwards that he is put in execution by the Sheriff, the Vouchee doth disseise him of the same Lands which he so recover'd in value, He shall have a *Post Disseisin* of that Land so recover'd in Value against the Vouchee. And the Writ is such :

Rex Vic', &c. Monstravit nobis C. quod cum B. Prior de D. nuper in curia nostra coram dilect. & fidel. nostris R. F. & sociis suis Justiciar. nostris de banco apud Westmonasterium per breve petivisset versus præf. C. septem acr. prati cum pertin. in I. idemque C. R. de S. inde placito prædict. vocasset ad warrant. ac per defaultam, quam idem R. postea fecit in eadem Cur. considerat. fuisset, quod præf. Prior recuperaret seisinam suam versus præf. C. de præd. placito, quod idem C. haberet de prato prædict. R. de S. ad valenciam prædict. sept. acr. prati, cujus quidem considerationis prætextu septem acr. prati cum pertin. de prato prædict. R. de S. in G. præf. C. per tunc Vic. nostrum Glouc. virtute cujusd. brevis nostri de judic. sibi in hac parte directi assign. fuer. præd. R. de S. præfat. C. de prædicto prato sibi (ut præmittitur) assignat. postmodum injuste disseisivit. Et ideo tibi præcipimus, quod assumptis tecum, &c. 12. tam militibus quam aliis liberis & legalibus hominibus de Com. tuo, in propria, &c. accedas ad prædict. pratum eidem C. assign. & per eorum sacram. diligenter inde fac. inquisit. Et si ipsum C. per prædict. R. de prædict. prato præfat. C. assign. post modum injuste disseis. inveneris, tunc ipsum R. capias; & in prisona nostra salvo custodire. fac. ita quod a prisona illa nullo modo deliberetur sine mandato nostro speciali, & ipsum C. de prædict. prato sibi assign. reseisiri, & damna sua in duplum, quæ occasione illius post des. sustinuit per sacrament. prædict. 12. taxari, & de terris & catallis prædictis R. in balliva tua sine delatione fieri, & idem C. habere fac. juxta formam statuti de hujusmodi Post disseisin. provis. Et scire fac. præfat. R. & c. Teste, &c.

And if the Defendant make the default at the *Scire facias* returned, then the Sheriff shall take the Inquest by default, and the Process against the Jury shall be by precept from the Sheriff to his Bailiff, &c. to summon twelve, &c.

And if a man recover in a *Scire facias* upon a fine, or upon a recovery had before by default of the Tenant, he shall have a *Post Disseisin* against the Tenant, if he be afterwards ousted of the same Land, *quod vi. M. 15. H. 7.*

And if a man be convict before the Sheriff upon a *Redisseisin*, and *Post Disseisin*, then he shall not be delivered out of Prison without the King's special Command, and then he

he ought to sue a *Certiorari* to remove the Record into the King's Bench, and there to agree with the King for his fine. And thereupon he shall have a Writ to the Sheriff to deliver him out of Prison; and the form of the Writ to remove the Record is such:

Rex Vic', &c. Ex parte Henrici de D. capti & detent. in prisoa nostra Staff. pro quadam redisseisina per ipsum Isabell. quæ fuit uxor Ric de C. de medietate unius mesuag. cum pertin in C. fac. ut dicit. unde coram te & custod. placitor. coron. nostræ in Com. tuo per inquisitionem inde apud C. per breve nostrum fact. convict. fuit: Nobis est supplicat. ut cum ipse eidem Isabel. de damn. sibi in hac parte adjudicat. jam sit satisfact. & parat. sit nobiscum finem pro eo quod ad nos pertinet in hac parte, juxta formam statuti de communi consilio regni nostri inde provis. facere: Velimus ipsius deliberationi providere. nos ut eidem H. quod justum fuerit inde facere valeamus, volent. super record. & process. inquisitionis præd. certiorari: Tibi præcipimus, quod si judic. inde reddit. sit tunc record. & process. inquisit. præd. cum omnibus ea tangent. nobis sub sigillo tuo distincte & apert. mittas, ita quod, &c. ubicunque, &c. ut ulter. super hoc fieri fac. quod de jure, &c. faciend', &c. Teste, &c.

A And that Writ of *Post Disseisin* ought to be brought by those who first recover'd, or by some of them, and of the same Land which was recover'd, or of part thereof, or against those, or some of them against whom the recovery was.

But if a man recover by a *Præcipe quod reddat*, and after he is disseised by him against whom he recover'd, and the Disseisor doth make Feoffment, and taketh back an Estate to him and another. He who first recover'd shall have a *Post Disseisin* against him and his Joint-tenant, as it seemeth, and he shall be punished by the Statute if it be found against him.

But if he who loseth the land by default or Reddition in a *Præcipe quod reddat*, do after disseise him who recover'd, and make a Feoffment in Fee unto another, or for life, it seemeth he who recover'd shall have a *Post Disseisin* against him who disseised him again, altho' he be not Tenant of the Land; for in a Writ of *Post Disseisin*, The Demandant shall not have Judgment to recover the Land, &c. But the Sheriff shall put and restore the Plaintiff to his Possession, if he find the disseisin, &c. and shall take the Defendant, and keep him in Prison until, &c.

And it seemeth, That *Non-tenure* is no Plea in a Writ of *Post Diff.* for the Defendant, but he ought for to answer the Disseisin, &c. when he comes in upon the Scire

424 *Writ of Entrie in the nature of Assise, &c.*

facias, &c. And if he make default upon the *Scire facias*, returned, the Sheriff shall take the Inquest: *Tamen quere.*

Writ of Entry in the nature of Assise, which is called, Entrie in de Quibus.

9 H. 5. 13.

If this Writ be brought against a Parson, he shall not have Aid of the Patron and Ordinary.

A Writ of *De Quibus* which is brought in the place of **C** an Assise is, where a man is disseised of any Lands, Tenements, or Rents, whereof he hath an estate in fee, then he may sue that Writ, and the Writ is such:

Rex Vic' &c. Præc. A. quod juste redd. B. unum messuag. cum pertin. in D. quod clamat esse jus & hereditatem suam, de quo idem A. injuste & sine judicio disseisavit prædict B. post primam transfret. dom. H. Regis in Valconiam, &c. ut dic. & nisi, &c.

And if a man bring a Writ of Disseisin made to his Ancestor, then the Writ is of another form, thus:

Præcipe A quod juste, &c. redd. B. unum messuag. cum pertin. D in D. quod clamat esse jus & hereditatem suam, & de quo idem A. injuste & sine judicio diss. C. patrem prædict. B. vel alium antecessorum præd. B. cujus hæres ipse est post primam transfret. domini regis, &c. ut dic. Vel sic, per quod clamat, &c. & in quod, &c. nisi per C. quod illud ei dimisit, quod injuste E. patrem, vel prædict B. &c. post primam, &c.

And in the *Per* and *Cui* thus:

Quod clamat, &c. & in quod, &c. nisi per C. cui D. illud dimisit, qui inde injuste & sine judicio, &c. prædict. E. patrem præd. B. cujus hæres ipse est, vel prædict. B. &c. post prim. &c.

And in the *Post* thus:

Quod clamat, &c. in quod, &c. nisi post disseisin. quam D. injuste, &c. fecit E. patri vel al. anteces. præd. cujus hæres ipse est, vel præfat. B. post primam transfretationem, &c. ut dicit. & unde queritur, &c. Et nisi, &c.

And it appeareth by these Writs, that altho' he bring a Writ of a Disseisin made to himself, or of a Disseisin made to his Ancestors, that in both cases the Writ shall be *Quod clamat esse jus & hereditatem suam.*

And if *Tenant* for life, or *Tenant* in tail be disseised, they **E** may sue a writ for Disseisin *de Quibus*, &c. but in that writ it shall not be said *Quod clamat esse jus suum & hereditatem suam*, and in his Count he shall set forth the especial estate, &c.

And an Abbat, or Prior, or Mr. of an Hospital, or a Bishop shall have a Writ *de quibus* upon a disseisin of their Predecessors of Lands, Tenements, or Rent, and the Writ shall be such:

Præcipe

Præcipe A. quod juste, &c. red. Priori de N. unum mesuagium quod clam. esse jus Eccles. ipsius Prioris S. Mariæ de N. & in quod idem A. non habet ingress. nisi post. diff. quam L. inde injuste & sine iudicio fecit R. quondam Priori de N. prædecess. præd. Prioris post primam, &c. ut aic. & unde queritur, &c.

And if it be a Rent then thus :

Rex Vic. præcipe I M. quod juste, &c. redd Priori de C. tres solid. reddit. cum pertin in D. quod clam. esse jus Ecclesie ipsius Prioris S. Nic. de C. Et de quibus W. D. injuste & sine iudic. disseisvit W. quondam Priorem de C. præd &c.

G And the Aunt and the Niece shall joyn in the Writ, upon a Disseisin made to the Father of the one, the Grandfather of the other.

H And a Writ of Entrie sur Disseisin made unto his Ancestors of a Stream lieth, and the Writ shall be, *Præcipe quod reddat unum gurgitem*, and in his Count he shall alledge the Esplees in taking of Fishes.

I And so he shall have a Writ of Entrie in de quibus upon the disseisin of a passage, *quod Vi. H. 8. E. 3.*

K And if the Disseisor enfeoffe the King, who enfeofferth another in Fee, the Disseisee shall have a Writ of quibus upon the Disseisin against the King's Feoffee in the Post, &c. 12 E. 3. 7. 23.
E. 3. Fitz.
Entrie 11.

A And if Tenant in tail bring a Writ of Quibus upon a Disseisin made to himself, he may count that he was seised in his Demesne as of freehold, without shewing any particular estate, or how the estate began, or he may count upon the special matter and shew the gift in tail, *quod ve. P. 33 H. 6.* 1 M. Dyer.
101.

B And a man may have a Writ of Entrie of Quibus, upon a Disseisin of a common, *Quod reddat pastur. ad decem boves, &c. quod vi. P. 4 E. 3.*

C And a man shall not have a Writ of Entrie in the Post, where he may have it within the degrees, in the Per, or in the Per and Cui. 14 H. 4. 10.
Hunkf 24.
E. 3. 70.

D If a man disseise the father of a marsh, and maketh the same Meadow, and the Father dieth, the Son and heir shall have a writ of de quibus upon a Disseisin made to his Father of that Meadow, and by the writ he shall demand the Lands, by the name of a Meadow, and not by the name of a Marsh. Yet no Præcipe will lie of a Marsh because properly it cannot be named 13 E. 3.
Br. demano. 23. 39 H. 6.
8. Vi.
39 H. 6. 8.

And so if it be Land covered with Water, and he is disseised thereof, and the Disseisor make it Meadow, the Disseisee shall have a writ of Quibus, and by his writ demand the Meadow, and suppose that he was disseised of Meadow by the writ, &c. he shall have a Præcipe by the name of a House.

And so if a man be disseised of Land, and he build a House upon the same, he shall suppose the Disseisin to be of a House, &c. Quere of this.

Writ of Dum fuit infra etatem.

And the Writ of *Quibus* upon Disseisin of an Office is such :

Rex Vic. &c. Præcipe H. Abb. de Burg. S. Petri, quod iuste, &c. reddat B. officium Serjeantiae in Abbacia de Burgo S. Petri, & redditum 24 panum, quadragint. lagenar. cervisie, & sex ferculorum cum pertin. in Vill. de Burgo S. Petri, quæ clamat esse jus & hereditatem suam, & de quibus idem Abbas iniuste & sine iudicio disseis. &c. E

And he who cometh in unto any Land by Record, or by Election, or by Succession, or by Disseisin, the Writ shall be brought against such Person always in the *Post*. F

Writ of Dum fuit infra etatem.

A Writ of *Dum fuit infra etatem* lieth, where an Infant maketh a Feoffment in Fee of his Lands, or for life, or a gift in tail, when he cometh of full age, he may have that Writ to recover those Lands or Tenements, which were so aliened by him, &c. And within age, he may enter into the Land, and take it back again, and by his Entry, he shall be remitted to his Ancestors right; but yet he shall not maintain that Writ, until he be of full age of 21 years, for the words of the Writ do so suppose, *Dum fuit infra etatem*, by which it appeareth that he is not within age at the time of the Writ, &c. and also the Writ is such; *Qui plena ætatis est, ut dicit*, by which it appeareth that he ought to be of full age, when that he bringeth that Writ; and the Writ is such : H

Rex Vic. &c. Præcipe A. quod, &c. redd. B. qui plena ætatis est ut dicit, duo mesuagia, &c. quæ idem B. ei dimisit dum infra etatem fuit, ut dicit, &c. Et nisi fecer, &c. And so in the *Per*, *In quæ idem A. non habet ingressu nisi per C. cui præd. B. illa dimisit.* And in the *Post* thus, *In quod, &c. nisi post dimis. quom præd. B. dum inf. ætat. fuit inde fecer. W. ut dic. & unde queritur, & nisi, &c.* But that clause, *Qui plena ætatis est*, shall not be put in the Writs of *Per*, *Cui*, or *Post*, but only in the first Writ, by Grant made by the Demandant to the Tenant.

And if a man bring this Writ upon the Alienation of his Ancestors, then this clause; *qui plena ætatis est*, shall not be in the Writ, and yet the Infant shall have a *Dum fuit infra etatem* of a seisin, and Alienation of his Ancestor during his non-age, and the Writ shall be such : I

Præcipe A. quod, &c. redd. B. unum mesuag. cum pertin. quod clam. esse jus, &c. & in quod idem A. non habet ingressu nisi per C. patrem, vel alium anteces. prædict. B. cujus hæres ipse est quod illud ei dimisit dum infra etatem fuit : Vel sic,

39 H. 6. 42.
In 46 E. 3.
34. A *Dum fuit infra etatem* was admitted of a Rent, and yet by some the gift is void; but the delivery of the Deed is not void.

lic, *Quod clam. &c. & in quod, &c. nisi per C. cui D. avia prædict. B. cujus, &c. dum eadem D. &c.* And in the *Post, Quod clam. &c. & in quod, &c. post dimis. quæ D. amita, vel consanguinea prædict. B. cujus hæres ipse est, dum eadem D. &c. inde fecit H. ut dic & unde queritur, &c.*

K And if two Infants be Joynt-tenants, and they alien the Land during their non-age, at their full age they ought not to sue forth several Writs of *Dum fuit infra etatem*, because their non-age is the cause of the action which is several, for the non-age of the one, is not the non-age of the other, nor the alienation of the one, the alienation of the other.

34 H. 6. 31.
Davies ac.
19 H. 6. 45.
Ac de cui
in vita.

And if the Husband and Wife alien the Wives Lands, during the non-age of the Husband and Wife, the Wife at her full age after the death of the Husband, shall have *Dum fuit infra etatem* for such alienation, *M. 14. E. 3*

L But if the Husband were of full age, and the Wife within age, and they both alien the Wives Lands, and then the Husband dieth, it is a question whether the Wife shall have a *Dum fuit infra etatem*, and I conceive that she shall not have a *Dum fuit infra etatem*, or a *Cui in vita* as she pleaseth, for when they joyn in a Feoffment of the Land, it shall be said the Feoffment of the Wife until she do disagree, for if the Husband and Wife make a gift in tail, or a Lease for life of the Wives Lands rendring Rent, if the the Husband dieth, the reversion is only in the Wife, and she may accept the Rent, and the same shall bind her and her heirs; and then if she will not accept the Rent, but, because she was within age at the time of the Feoff, she will bring a *Dum fuit infra etatem*, it seemeth she shall not be received so to do, for by that suit she affirmeth that she made the Feoffment, and then it shall not be said the Feoffment of the Husband only, but the Feoffment of the Wife alone after the death of the Husband, if she affirm that to be her Feoffment; and by the *Dum infra etatem*, she doth affirm the same, and that she made the Feoffment during the Coverture; and on the other side it may be said, That she doth not affirm the same to be a lawful Feoffment made by her. And also by the Feoffment of the Husband, the Entry of the Wife shall be taken away; but by the Feoffment of the Wife during her non-age, his Entry shall not be taken away: and therefore *Quære* the Law, &c.

C. p. f. 337. a

Writ of Cui in vita.

THE Writ of *Cui in vita* lieth, where the Husband A doth alien in Fee the right of Inheritance of his Wife, or the Freehold of his wife by Feoffment, or grant for life, or in tail; Then after the death of the Husband, the wife shall have *Cui in vita contradicere non potuit*: And the writ lieth where the wife hath an Estate for life, or in tail, and the husband alieneth that Estate and title of the wives, then the wife after his death shall have that writ.

39 H. 6. 38.
Prif. contra
vi. 16 H. 7.
8, 9.

And if the wife do not bring the writ during her life, B then if she had an Estate in Fee-simple, her Heir shall have a writ which is called *Sur cui in vita*, after her death. And if the wife have an Estate in Tail, and her Husband alien, and make a Feoffment of that Estate; then if the wife dieth, her heir shall have a writ of *Formedon* in the Descender to recover that Estate, and not a writ of *Sur cui in vita*; for those writs of *Cui in vita*, and *Sur cui in vita*, are writs founded upon the Common Law, and of an Estate in Fee-simple; for there was not other Estate at the Common Law which could descend, but a Fee-simple: For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without heir, he shall have a writ of Escheat.

A feme sole made a Deed of Feoffment, but always after continued seisin of the Land, after she took

Husband, who delivered the Land to the party to whom the Deed was made, the Feme may have a *Cui in vita*; because she did not execute the Feoffment by delivery of the Land, 34 E. 2. Fitz. *Cui in vita* 21.
Plo. Com. 29. & 239. 12 E. 4. 3.

And so by the Common Law. If a man give Lands to one and the Heirs of his body, &c. if he dieth without Heir of his body, the Lord by the Common Law shall have a *Formedon* in the Reversion of that Estate, for want of Issue of him to whom the Gift was made; but yet the Donor shall have an Estate in Fee-simple, as I think, and that appeareth by the Statute, which saith, *De tenentibus quæ multoties dantur sub conditione*; by which words it appeareth, That the Gift had a Condition implied therein; so that it shall revert for want of such issue, and by reason of the Tenure reserved, &c. but it doth not appear by the Statute that he shall have an Estate tail of other nature than the Estate which was by the Common Law, and the form of the Writ of *Cui in vita* is such:

Rex Vis. &c. Præcipe A. quod iuste, &c. reddat B. quæ fuit C
uxor

uxor D. unum mes. cum pertin. in N. quod clamat esse jus & hered. suam. Et in quod idem A. non habet ingressum nisi per prædict. D. quondam virum ipsius B. qui illud ei dimisit, cui in ipsa vita sua contradicere non potuit, ut dicit.

D And if she hold in Frankmarriage, and the husband alien, then the writ shall be, *Quod clamat jus esse & maritag. suum, & in quod idem A. &c. nisi per C. cui præd. D. quond. vir ipsius B. illud, ut supra.*

And this writ of Cui in vita may be in the Per, Cui and Post, and in the Post the writ shall be :

Et in quod idem A. non habet ingressum, nisi post dimissionem, quam pæ. D. quondam vir ipsius B. cui ipsa in vita, &c. non potuit, inde fecit, ut dic. & unde queritur, &c. & nisi, &c. Vel sic, Quod clam. esse jus suum de dono S. qui ipsam B. inde feoffavit, & in quod, &c.

E And if the husband and wife purchase joyntly, and the husband alieneth all in Fee and dieth, the wife shall have a writ in this form :

Quod clamat esse jus suum de dono I. qui ipsam B. & præd. C. quondam virum suum inde feoffavit, & in quod, &c.

F And if she have an Estate to her and the heirs of her body, and of the body of her husband begotten, then the Writ is ; *Quod clamat tener. sibi & hered. de corpore suo, & de corpore præd. D. quondam viri sui exeuntibus, ex dimissione I. Vel*

G *sic, quod clamat esse jus suum ex dimissione quam I. inde fecit eidem B. & præd. D. quondam viro suo, & hered. ipsius B. and there the husband shall have a joynt Estate with the wife for the term of her life.*

H And if the wife claim the Lands in Dower, then the Writ shall be :

Quod clamat esse dotem suam ex dono D. primi viri, vel secundi viri sui, Et in quod, &c. nisi per præd. C. secundum virum ipsius B. vel tertium virum, qui illud ei dimisit, &c.

And if she hold for term of life of dimission, then the Writ shall be :

Quod clamat tenere ad vitam suam ex dimissione quam I. inde fecit eidem B. & præd. D. quond. viro suo ad vitam eorundem B. & D:

I And if the husband and wife lose by default the wives Lands, after the death of the husband, she shall have a Cui in vita for to recover those Lands so lost by default: but if a man recover by a Cesser Lands of the wife by default of the husband and the wife upon a Cesser during the Marriage had betwixt them ; if the husband dieth, the wife shall not have a Cui in vita upon that recovery, *quod vi. Tri. 4. E. 2.*

11 Aff. 11.
Br. Aff. 167.
16 H. 7. 8. 9.
48 E. 3. 8.
39 H. 6. 38.
&c.

Note the Statute of West. 2. c. 3. extends to give this account, as well for Recov. before the Statute, as after, 5 E. 2. Cui in vita 23.

2 E. 4. 12.

Note the case of West. 2. c. 16.

If

9 E. 4. 16. If the Husband and Wife, and a third Person purchase jointly, and the Husband alieneth all in Fee and dieth, the Wife as it seemeth shall have a *Cui in vita* of a moiety, being the third Joyntenant; but it seemeth such alienation is a severance of the Joynture, *quod vi. Pasc. 16. E. 3.* *Cui in vita* in the Abridgment, and if the Husband alien the Corody in Fee, which the Wife hath, it shall not be any discontinuance, but the Wife may demand her Corody.

If the husband and wife exchange the Land of the wife for other Lands, if the wife agree unto the exchange after the husband's death, she shall not have a *Cui in vita*. And if the wife do accept of the parcel of the Land in Dower, of which she hath a *Cui in vita*, by that acceptance she shall be barred in her *Cui in vita* of the residue.

36 E. 3. She shall have a *Cui in vita*, that is of a purchase during the Coverture, that he shall not have a *Cui in vita* after the death of the others; but for *etc.* he may. 10 E. 4. 2.

2 E. 2. *Cui in vita*, 19. 8 E. 2. *ibid.* 25.

8 E. 2. *Cui in vita* 28. The husband gave the Land of the wife to I. who gave other Land to the husband and wife, and to her son of the husband, and to the heirs of him who survived, and that was pleaded by Exchange in Bar, in a *Cui in vita*, and holden no Bar. 20 E. 3. *Cui in vita* 10.

So if the accept a Rent where she and her Husband make a Feoffment. 21 H. 6. 24.

19 H. 6. 45. If husband and wife be Joynt-tenants before the Coverture, and the husband alieneth all the Land and dieth, she shall not have a *Cui in vita* but for a moiety. But if they be Joynt-purchasors during the Coverture, and he alien all the Land and dieth, his wife shall have a *Cui in vita* of the whole Land, because that during the Coverture as to purchase, they are but one Person in Law. And the Writ of *Sur Cui in vita* lieth for the heir of the wife, where the husband alieneth all the Land in fee, and the Writ is such:

Præc. A. quod, &c. reddat B. unum mess. cum pertin in N. quod clamat esse jus & hereditatem suam, & in quod, &c. nisi per C. quond virum D. matris præd. B. cujus hæres ipse est, qd. illud ei dimisit, cui ipsa D. in vita sua contradicere non potuit, ut dicit, nisi, &c.

And in the *Per* and *Cui* thus:

Quod clamat, &c. Et in quod, &c. nisi per C. cui D. quond. vir. E. matris, amita, sororis vel consang præd. P. cujus hæres, &c. illud ei dimisit, cui ipsa D. in vita, &c.

And in the *Post* the Writ shall be thus:

Nisi post dimissionem quam I. quondam vir C. matris præd. B. & amita præd. M. cujus hæres ipse est, cui ipsa C. in vita sua contra-

contradicere non potuit, inde fecit, ut dicit, & unde queritur, &c. & nisi, &c.

D And by that Writ appeareth, that the Aunt and the Niece may joyn in a Writ of *Sur cui in vita*, upon an alienation made by the Husband, their common Ancestor; or upon a Recovery had against the Husband and Wife, who was the common Ancestor to them, if the second Husband alien the Lands of the Wife, and he and his Wife die, the issue of the Wife and the first Husband shall have a *Sur cui in vita* against the Alienee; although the second Husband be living, if he were not intitled to be Tenant by the courtesie; but if the second Husband be intitled to be Tenant by the courtesie, then the issue of the first Husband shall not have a *Sur cui in vita* during the life of the second Husband.

8 E. 2. *Cui in vita* 26.

44 E. 1.

Fitz. ib. 30.

5 E. 3. 37.

Cui in vita,

13. 49 E. 3.

29 Quære.

But 50 E. 3.

6 A. 5 E. 2.

Cui in vita

25.

F And a *Sur cui in vita* was maintainable of a Rent M. 12.
G E. 3. And in a *Cui in vita*, the grant or gift alledged in the Writ is not traversable.

H If a man giveth Lands to a woman to marry her, and they marry, and afterwards the Husband alieneth the Lands and dieth, the Wife shall have a *Cui in vita* of those Lands given her by her Husband.

Writ de sine assensu Capituli.

I **T**HE Writ of *Sine assensu Capituli* lieth where a Dean, Bishop, Prebendary, Abbat, Prior, or Master of an Hospital alien the Lands which they have in the right of their House; Abby, or Priory, without the assent of their Convent, or their Chapter or Brethren, &c. He who is the Successor shall have that Writ, which is such, and may be in the *Per, Cui* or *Post*.

K *Rex Vic. &c. Præcipe A. quod, &c. reddat. B. Episcopo de S. unum mess. cum pertin. in N. quod clamat esse jus Ecclesie ipsius Episc. S. Mariæ de S. & in quod idem A. non habet ingressum nisi per H. cui R. quondam Episcop. de S. prædeces. prædict. nunc Episc. illud dimisit sine assensu & voluntate capituli sui, ut dicit, &c.*

And for a Master of an Hospital, the Writ shall be:

Rex Vic. &c. Præcipe A. quod iuste, &c. reddat B. custod. Hospit. S. Mariæ Magd. Linc. unum mess. quod clamat esse jus Hospitalis sui præd & in quod idem A. non habet ingress. nisi per D. quondam custod. Hospitalis prædict. qui illud ei dimisit sine assensu & voluntate fratrum & sororum ejusdem Hospitalis, ut dicit, & nisi, &c.

And for a Prebend the form of the Writ is such:

Rex

Writ de sine assensu Capituli.

Rex Vic. &c. *Præcipe* A. quod, &c. redd. B. *Præbendario* *Præbendæ* de D. in *Eccles.* B. Petri Ebor. *unum mes.* &c. in A. quod clamat esse jus *Præbend. sue.* Et in quod, &c. nisi post *dimissionem*, quod R. de B. nuper *Præbendarius præbend. prædict.* *predecess.* *Præbend. prædict.* sine *licentia & voluntate Archiepiscopi Ebor. decani & capituli Eccles. prædict.* inde fecit W. de R. ut dicit, & unde queritur, &c.

And for the Prior of St. John of Jerusalem in England, lieth a Writ upon an Alienation of his Predecessor, thus:

Quod reddat B. *Priori Hospit. S. Joh. Jerus.* in Anglia, &c. quod clamat. esse jus *Eccles. sue S. Joh. Jerus.* in Anglia, & in quod non habet, &c. nisi per W. quondam *Priorem S. Jo. &c.* *predecess. præd. nunc Prioris*, qui illud dimisit sine assensu *capituli*, ut dicit, & nisi, &c.

And the Process in these Writs are Summons, *Grand Cape*, and *Petit Cape*.

And hereby it appeareth, that a Prebendary shall have a Writ *De sine assensu Capituli*; by which it seemeth that he hath a Fee-simple in the Prebend; and yet one Prebendary may enter upon the alienation of his Predecessor; as a Parson shall do upon the alienation of his Predecessor.

[195]

And also a Prebendary shall have a *juris utrum* upon an alienation of his Predecessor, by which it seemeth he hath not a greater state than as Parson: But yet it seems reasonable that he have this Writ, *De sine assensu Capituli*; because that he, the Bishop, and the Chapter are but one body, and are as one body, altho the Possessions be severed and divided amongst them; and every one of them is enabled to bring an Action of his own Possession in his own name.

And a man may have a Writ of *Sine assensu Capituli* against the same Person by several Precipes, in the Writ of Lands in several Towns, and upon demises of his several Predecessors, and it shall be good. *Quod vi. H 33 E. 3.*

And if the Prebendary, or a Bishop, or Abbat be disseised, and afterwards he releaseth to the Disseisor; it seemeth the same is an alienation upon which he may have a Writ *De sine assensu Capituli*; for if the Disseisor die seised after the releafe made, the Successor hath not any remedy but by this writ, or by a writ of Right; But if the Disseisor doth not die seised, then it seemeth the Successor may enter upon the Disseisor, notwithstanding the releafe of his Predecessor, for by the releafe no more passeth than he may rightfully releafe, &c.

Writ

Writ of Assise of Mortdaunceſtor

C **T**HE Writ of Mortdaunceſtor lieth, where my Father or Mother, Brother or Sister, or Uncle or Aunt, or Nephew or Neece dieth ſeiſed of any Lands, Tenements or Rents; or of a Corody or other Rents; as Hens or Capons iſſuing out of other Lands of an Eſtate of Fee-ſimple: Now if a ſtranger after their deaths abate in that Land, Rent or Profit, I who am his Heir ſhall have this Writ of Aſſiſe of Mortdaunceſtor.

D And if the Anceſtor were ſeiſed, the day that he died, of any lands or rents, or other like things of an eſtate in Fee-ſimple, although that a Stranger entreth and diſſeiſeth him of that land or tenements the day that he dieth, ſo that he dieth not ſeiſed of the ſaid land or rents, &c. Yet I who am his heir ſhall have that Aſſiſe of Mortdaunceſtor, becauſe the Writ doth not ſuppoſe that any Anceſtor died ſeiſed, but the Writ ſaith, *Parati ſacramento recogn. ſi W. pater, &c. fuit ſeiſitus in dominico ſuo ut de feodo, die quo obiit, &c.* and the ſame is ſufficient, although he dieth not ſeiſed; and the form of the Writ is ſuch:

E *Rex Vic. S. ſalutem. Si A. fecer. &c. tunc ſum. &c. xij. liberos & legales homines de viſn. de N. quod ſint coram Juſticiar. noſtris ad primam aſſiſam cum in partes illas venerint, vel coram Juſticiariis noſtris apud Weſtmon. octabis, &c. vel coram dilectis & fidelibus noſtris D. & E. & his quos ſibi aſſociaverimus ad cert. diem & locum, quos eidem D. & E. tibi ſcire fac. parat. ſacramento recognoſcere, ſi W. pater præd. A. vel mater, ſoror, frater, avuncul. vel amica fuit ſeiſitus in dominico ſuo ut de feod. de uno meſuagio & una virgata terræ cum pertin. in N. die quo obiit. Et ſi obiit poſt coronation. dom. H. Regis. Et ſi idem A. propinquior hæves ejus ſit, & interim præd. meſuag. & terr. videant, & nomina eorum imbrevari fac. & ſum. per bonos ſum. B. qui præd. meſ. & terras nunc tenet, quod ſit ibi ad audiend. illam recogn. & habeas ibi ſum. & hoc præ. Teſte, &c.*

10 E. 2. For-
medo. 55.
Plow. Com.
239. if a
man hath
iſſue a Son,
and his wife
dieth; and

he taketh another wife, and hath iſſue a ſon, and lands are given to him; and his ſecond wife in ſpecial tail before the ſtatute of Donis, if a ſtranger had abated, no Mortdaunceſtor lieth.

F And upon that VVrit he needs not have any ſpecial Parent, for the general Parent made to the Juſtices, ſhall ſerve for that VVrit. And if the VVrit be, *Quod ſit coram dilectis & fidel. noſtris D. & E. & his quos ſibi aſſociavimus*, then they

Writ of Assise of Mortdauncestor.

they use to have a special Patent directed to the same Justices, &c. But if the Justices be the Justices of Assise in the same County, then their general Patent shall serve for that Assise as well as if they had a special Patent. And the special Patent is such:

Rex dilect. & fidelibus suis D. & E. salut. Sciatis quod constituimus vos Justic. nostros una cum his quos vobis associaver. ad ass. mortis ancessoris capiend. quam A. arrain coram vobis per breve nostrum de uno mes. & una virgata terr. in N. & ideo, &c. as in the Patent of Assise of Novel disseisin.

30 Ass. 24.
Br. Attaint.
72t 50 Ass.
4 Br. Atta.
84.

And a man may have an Assise of Mortdauncestor of several Rents, against several persons in several Counties, and in the end of the Writ shall be several summons against the Tenants; and the form of the Writ is such:

Rex Vic', &c. Si A. & B. fecer. &c. tunc sum xij. liberos, &c. parati sacramento recognoscere si, W. pat. prad. A. & avus prad. B. fuit seiscitus, &c. de decem solid. redditus cum pertinent. in N. & si obiit, &c. Et iidem A. & B. sint, propinquior, &c. & interim teneamentum illud, unde redditus ille provenit, videant, & nomina eorum, &c. & sum per bon. lum. S. qui sex solid redditus eis inde deforc. & T. qui quat. solid. redditus eis inde deforc. quod tunc sint, &c.

And by this Writ it appeareth, That the Aunt and the Neece shall join in Assise of Mortdauncestor, and that is by the Statute of Gloucest. cap. 6.

And if the Heir who bringeth Assise be within age, he shall not find Pledges; and therefore the form of the Writ shall be of another form, and shall not say, *Si A. fec. te, &c.* but thus:

Rex Vic', &c. Sum, &c. xij. liber. & legal. homines, &c. si W. pat. prad. A. qui infra etatem est, ut dic. fuit seiscit. &c. And shall not say in the Writ, Et si obiit post coronat. &c. because it appeareth by the age of the Demandant, but if many sisters be Demandants, and some of them be within age, and some of full age, then the writ shall be in the common form, as if all were of full age.

[196] If a Man go beyond the Sea in Pilgrimage, and dieth there, his Heir shall have a Writ of Mortdauncestor of another form; thus:

Rex Vic', &c. Si A. fecer. &c. sum. xij. &c. si W. pat. prad. A. fuit seiscit. in dominico suo, &c. de reddit. unius clavi gariofli, cum pertin. in N. die in quo it. peregrinat. arripuit versus terr. sanct. vel versus Hierosolym. vel versus S. Jacob. in quo itinere obiit, ut dic. & si iter illud arripuit post coronationem, &c.

And

A And in that Writ it sufficeth if he were seised the day he went out of the Land, and took the Sea, altho it was not the day of his death. And if the Father enter into Religion, and be professed, the Son shall have a Mortdauncestor, if the Stranger abate in the Land; the Writ shall be, *Si W. pater, &c. die quo habitum Religionis assumpsit, in quo habitu professus fuit, ut dicitur, Et si habitum illud assumpsit post coronationem, &c.*

B If a man have a Corody to him and his Heirs, if he die seised, or was seised thereof the day of his death, his Heir shall have an Assise of Mortdauncestor thereof; if he be taken from him; and the Writ shall be:

Rex Ric', &c. Si W. fecer. &c. tunc sum, &c. xij. liberos, &c. de visn. villa Westm. quod sint, &c. parati, &c. Si L. mat. pred. W. fuit seista in domin. suo ut de feodo de xl. s. reddit. & redditu lxij. panum, trium lagenarum vini, xx. lagenar. cervisie, & xxx. ferculorum cum pertin. in villa Westm. die quo obiit. Et si obiit, &c. Et si idem W. &c. & interim ten. unde redditus ille provenit videant, & sum. &c. T. Abbat. Westmon. & fratrem R. de B. & fratrem K. de S. commonachos ejusdem Abbat. is qui reddit. pred. ei deforc. quod tunc, &c.

C And the order to set the parcels in the Writ, shall be as in a Writ of Right.

D And a man shall have a Certificate upon this Writ, and also Writs of Association, and *Si non omnes*, as he shall have in Assise of Novel disseisin.

E And by the Statute of *Gloucest.* if Tenant by the curtesie alien his Wife's Inheritance, and dieth, the Heir of the Wife shall have an Assise of Mortdauncestor, if he have not Assers by descent by the Tenant by the Curtesie, and the same shall be as well where the Wife was not seised of the Land the day of her death, as where she was seised thereof, for that Writ is given by the Statute.

F If the Lord have the Ward of the Heir of his Tenant, and when he cometh of full age, the Guardian will not suffer him to enter into the Land, the Heir shall have an Assise of Mortdauncestor against the Guardian, by the Statute of *Marlebridge*, cap. 16.

G And the Process in Mortdauncestor is Summons against the party, and if he make default at the day of the Assise return, then the Plaintiff ought to sue a Returnmons, and if he make default again, the Assise shall be taken by his default.

And if a man vouch in Assise of Mortdauncestor, and at the first day the Vouchee make default, then a Return-

8 Ass. 13. Br.
default and
appurte-
nance, 88.

mons shall issue forth against him; And so if the Tenant or Vouchee at the first day be essoined; and afterwards at the day given by the Essoin, the Tenant or Vouchee make default, a Resummons shall be avoided. But if the Tenant at first day be essoined, as in the King's service, and afterwards make default at another day, the Assise shall be taken by his default, &c.

And if the Writ of Mortdauncestor be brought by several Summons against several Tenants, then the Assise may be taken one against one Tenant, and another against the other Tenant, *quod vi. 3 E. 3. Itin. North.*

And a Mortdauncestor doth not lie for Lands devisable by will, because title may fall to another who is not Heir by the will of the Ancestor, &c. and yet the Writ is true, that he was seised the day he died, *quod vi. 23 E. 3. lib. Ass.*

And if a man be seised in Tail, the remainder to his right heirs, and afterwards he died seised without issue of his body, and a stranger abateth, it is a question if the heir shall have an Assise of Mortdauncestor. And *An. 21. E. 3. Itin. Suff. M. 5 H. 4.* the opinion of some is, That if the remainder be to his right heirs, that then he shall not have an Assise of Mortdauncestor: But if a gift in tail be made unto one, the remainder to him and his right heirs, that then he shall have an Assise of Mortdauncestor, because he hath the remainder in Fee to him and his heirs: But it seemeth he shall not have an Assise of Mortdauncestor in the one case, nor in the other; for the words of the Writ are, *Si W. pater, &c. fuit seifitus die quo obiit in dominico suo ut de feodo*, and that he was not, for he was seised in demesne *ut de feodo taliato*, and not in demesne as of fee, and therefore the Jury cannot find that he was seised in his demesne as of fee, for of the demesne he was seised in tail. *Quere* of that.

And if the Ancestor dieth seised and hath two Sisters his heirs, one of them shall not have an Assise of Mortdauncestor against the other, for this Writ lieth against strangers, and not against parties in blood.

And so in Gavelkind, one brother shall not have a Mortdauncestor against the other for the privy of blood, but he ought for to sue a *Nuper obiit* against his brother, or one sister against the other, &c.

And *H. 13. H. 3. Itin. Suff.* the youngest brother had a Mortdauncestor against a stranger, and shall recover where the eldest went beyond Sea, although he were not dead, because 18 years passed since the eldest went beyond the Seas.

And

And A. 13 E. 2. It was adjudged accordingly; where the younger Brother recovered in Assise of Mortdauncestor, where the eldest went beyond the Sea, and was alive.

Writ of Nuper obiit.

A THE Writ of *Nuper obiit* lieth where the Grandfather, [197]
father, brother, uncle, or other Ancestors of the de-

mandant dieth seised of Lands, Tenem. or Rents of an Estate in Fee-simple, and after their death, one of the heirs of the same Ancestor doth enter and deforce the demandants; now he or those who are so disseised shall have that Writ against the Coparcener; and that Writ lieth for one Coheir against the others, or for divers Coheirs against many as the case is, and it ought to be where the common Ancestor dieth seised of Land, &c. of an estate in Fee-simple; for if one Sister do deforce another Sister of Land, whereof their Ancestor died seised of an estate in tail, her Sister shall have a Formedon against the Sister who deforc'd her, &c. and not a *Nuper obiit*. And the form of the Writ is such:

7 E. 3. 15.

B *Rex Vic'*, &c. Si A. & B. fecerint, &c. tunc sum &c. C. quod sit coram Justic. nostris apud Westm. tali die, &c. ostens. quare deforc. pref. A. & B. rationabilem partem suam, que eas contingit de hereditate, que fuit W. de N. patris, matris vel alterius antecess. predict. A. B. & C. cujus heredes ipse sunt, & que nuper obiit, ut dicit, &c. Et habeas ibi sum. & hoc breve, &c. Teste, &c.

And the Writ may be brought by the Aunt against her Sister and her Neece; and then the Writ shall be such:

Rex Vic', &c. Si A. & B. uxor ejus fecerint, &c. tunc sum. &c. C. & D. quod sint, &c. ostens. quare deforc. prefat. A. & B. rationabilem partem ipsius B. que ei contingit de hereditate que fuit E. in N. matris predict. B. & C. & proava predict. D. cujus hered. ipse sunt, & que nuper obiit, ut dic. & habeas, &c.

C And that Writ lieth betwixt coheirs in Gavelkind, as well as between women who are Coparceners; and if one Coparcener be deforced by another Coparcener and a stranger, he shall have a *Nuper obiit* against her Coparcener, and by the Rule in the Register, that non-tenure shall not abate the Writ.

Br. Entry
congeable
122collects;
that the
stranger.
gains no-
thing of the
freehold by
that entry,
quod noi.

D And also by the Rule in the Register, in a *Nuper obiit*, Nontenure of parcel of the thing demanded shall not abate the Writ.

And if two of the coparceners enter after the death of E their ancestor and deforce the third sister, and afterwards they make partition bewixt them, and then one of the two alieneth her part unto a stranger in Fee, yet the third shall have a *Nuper obiit* against her two sisters notwithstanding that alienation, and shall recover the third part thereof, whereof the coparcener who aliened not was seised, &c.

And for to recover the third part of the other Coparcener, which is in the hand of the Stranger, she ought to sue an Assise of Mortdauncestor in her name, and in the name of her other Coparceners, &c. Or a Writ of *Aiel*, as the Case is.

16 H. 7. 1.
per. Keble,
by the dis-
claimer the
demandant
is put to his
Assise of
Mortdaun-
cestor also
he is barred
of his da-
mages in the
Nuper obiit.

And if one Coparcener do enfeof a Stranger in Fee, and G taketh back an Estate to him in Fee, or for Life, yet it seems a *Nuper obiit* lies against him by the other Coparcener, if he do not disclaim in the bloud, M. 2. E. 2. and it seems reasonable. But M. 21 E. 3. and M. 45 E. 3. 7 H. 6. 8. It is holden the contrary: But several Tenancy, or non-Tenure, is no good Plea in a *Nuper obiit*, for the privity of blood; but if he claim by purchase, or disclaim in the bloud, it is a good Plea.

And a *Nuper obiit* lieth betwixt sisters of the half H bloud.

And if a *Nuper obiit* be brought of the seisin of the Grandfather; darrein Seisin in the Father is no Plea, without alledging a dying seised in the Father, &c.

A *Nuper obiit* lieth of the Seisin of the great Grand- K father.

And the *Nuper obiit* ought to be brought by that Coparcener who is deforced, &c. against all the other Coparceners, although that some of them have nothing in the Tenancy.

And it appaareth, T. 4 E. 2. That the *Nuper obiit* lieth of L the Seisin of his Father, if the Father were seised the day that he dyed; or the day before, for that amounteth to a dying seised, &c.

And if one Sister hath Issue a Son, and dyeth, and the Son M doth enfeof a Woman in Fee of all the Land and afterwards marries her; The *Nuper obiit* doth not lie by the other Coparcener against the Husband and Wife; but there he may bring the Mortdauncestor in his own name, and in the name of the Husband against the Husband and Wife. An. 18 E. 2. *Iliper. Canc.*

A Villain and his Wife shall not have a *Nuper obiit* against N his

his Wife's Coparcener, because he is not enfranchised by the marriage of one of the Coparceners which was one of his Lords, to whom he was Villain before.

O And if the Father give Lands in Frankmarriage to his sister, and dieth seised in Fee of other Lands, she shall not have a *Nuper obiit* against her sister for the Lands in Fee-simple, unless he will put the Lands which were given in marriage in Hotch-pot, &c.

P A *Nuper obiit* lyeth of a Corody.

Q And Voucher, and the View do not lie in the *Nuper obiit*.

R And the Aunt and the Neece shall joyn in a *Nuper obiit* against the other Sister or Neece, &c.

Writ of Quare ejecit infra terminum.

S **T**He Writ *Quare ejecit infra terminum*, lyeth where a man leaseth Lands unto another for years, & after he entreth and maketh a Feoffment in Fee of the same Lands to a stranger, or for Life; the Lessee shall have that Writ *Quare ejecit infra terminum*, against the Feoffee or Lessee for Life.

T And in that Writ he shall recover his Term again, and his damages also if the Term be not ended, and if the Term be ended he shall recover all his damages.

U And the Process in that Writ is Summons, Attachment and Distress *infinite*, and not Process of Outlawry, because the Writ is not *vi & armis*. And the form of the Writ appeareth after, &c.

A But this Writ of *Quare ejecit infra terminum*, was devised, as it is said, by a wise man called *William Merton*, and for this cause. For if a man lease Lands for years, and after he ouste his Lessee, and after he hath put him out, he make a *Feoffment* of the Land unto a stranger in Fee. Now the Lessee cannot have a Writ of *Ejectione firme* against him who is the Feoffee, because he did not put him out, for which in that case the Lessee had no other remedy but to enter again into the Land. And if the Feoffee do then put him out, the Lessee may have against him an *Ejectione firme vi & armis* for the wrong done him, and before entry made by the Lessee, he had not remedy against the Feoffee. And therefore by the equity of the Statute of *West. c. 24.* (as often as hereafter it shall happen in the Chancery that in one case a Writ is found, and in the like case falling under the same Law, and wanting the same remedy, &c. Let the Clerks of Chancery agree &c.) And by reason of that Statute was this Writ devised.

It H. 6. 6.
If the term
expire pen-
dant the
Writ. yet
the Writ
shall not a-
bate.

Writ of Quare ejecit infra terminum.

But yet if the Lessor put out the Lessee; and presently make a Feoffment in Fee, so as the Feoffe be party or privy to the Ouster of the Lessee, then the Lessee shall have a Writ of *Ejectione firme vi & armis* against the Feoffee, because he is party to the Ouster, and to the wrong done unto him. And the Writ followeth:

Rex Vic', &c. Si A. fecerit, &c. tunc sum. &c. B. quod sit, &c. ostensur. quare deforc. pref. A. unum mesuagium cum pertinet, in N. quod C. ei dimisit ad terminum, qui nondum preteriiit, infra quem terminum idem C. prefat. B. mesuag. illud vendidit, occasione cujus venditionis idem B. pref. A. de mesuagio pred. ejecit, ut dicitur, & habeas, &c.

And the like Writ lieth where the Son and Heir of the Lessor maketh a Feoffment, &c. and the Feoffee ousted the Lessee.

And if the Lessee granteth over his term, and afterwards the Lessor maketh a Feoffment of the Land unto a stranger in fee. Now the second Lessee shall have that writ, &c. and the writ shall be,

Quare deforc. pref. B. unum mesuag. &c. quod R. cui L. illud dimisit ad terminum qui nondum preteriiit, eidem B. dimisit ad eundem terminum, infra quem terminum idem L. mesuagium, &c.

And so if 4 let a house to A. for years, who granteth over his estate to B. and afterwards two of the Lessors die; and the Survivor maketh a Feoffment unto C. in fee, B. shall have a *Quare ejecit infra terminum* against the said Feoffee, and the writ shall recite the special matter.

And if a man do lease land for years, and the Lessor doth suffer a Recovery to be against him upon a feigned title, who entreth, yet it seemeth the Lessee shall have this writ of *Quare ejecit infra terminum*, &c. And the words of the writ are, *Occasione cujus venditionis*; and yet the same is not properly a sale, but those words are but of form. But before the Statute of 21 H. 8. c. 15. it seemeth that the Tenant for years could not have falsified the Recovery had against his Lessor.

And if a man lease lands for a term of years, and afterwards dieth without heir, and the Lord by Escheat enter and puts out the Termor, it is a doubt whether he shall have a *Quare ejecit infra terminum* against the Lord by Escheat; but it seemeth reasonable that he should have it.

And so if the Villain leaseth Lands for years, and after the Lord of the Villain enter, and puts out the Termor, the Lessee shall have that writ. And so if a man lease Lands for years,

35 H. 8. 52.
&c. 36 H. 8.
63 L. H. 8.
fol. 74.
5 H. 7. 7.
7. 37. 11 H.
6. 7. Babing-
ton.

years, and afterwards a stranger put out the Lessee, and disseiseth the Lessor, and afterwards the Lessor releaseth unto him, it seemeth the Lessee shall have the Writ, *Quare ejecit infra terminum* against the Disseisor, &c.

And *Quare ejecit infra terminum* lieth as well against the Lessor, as against his Feoffee, *quod vide H. 19 H. 6.*

K And it seemeth that the Sale supposed in the Writ, is not traversable but only the Ejectment, &c. And if so, then it seemeth the Writ lieth against the Lord by Escheat, or against the Lord of the Villain who putteth out the termor, &c.

But an *Ejectione firme* lieth against the Lord of the Villain, if he put the Termor out of his Lease made by his Villain, before Entry made by the Lord into the Land. And so an *Ejectione firme* lieth against the Lord by Escheat, if he oust the Termor of the Lease made by the Tenant, &c.

And for the Book of 19 H. 6. it appeareth that it is in the Election of the Lessee, to sue a Writ of *Ejectione firme*, or a Writ of *Quare ejecit infra terminum* against the Lessor or his heir, or against the Lord by Escheat, or against the Lord of the Villain, if they put the Termor out of his term, &c.

Writ of Ex gravi Querela.

L THE Writ of *Ex gravi Querela* lieth, where a man is seised of any Lands or Tenements in any City or Borough, or in Gavelkind; which Lands are devisable by Will, time out of mind, &c. Now if one who had Lands or Tenements there, doth devise those Lands or Tenements unto another in Fee-simple, or in Fee-tail, he to whom the devise is made shall have this Writ of *Ex gravi querela*, for to execute that devise.

Note, that if a Town hath paid 15. it is no ancient Town that may devise,

Per 40. Ass. 41. 39 Ass. Br. Ass. 355. This Writ is not incident to Lands devisable. *Quare*, If a Devise of a Rent out of the Land devisable, be within the benefit of this Writ. 26 H. 8. &c. or 5 & 4, & 5 Ma. Dyer 140.

M And if a man do devise such Lands or Tenements unto one in Tail, the Remainder over in Fee unto a stranger, if the Tenant in Tail enter and be seised by force of the Entail, and afterwards dieth without issue, he in the remainder shall have such Writ of *Ex gravi querela* to execute that Devise:

And so if a man devise Lands or Tenements unto one in Tail, and afterwards the Tenant in Tail dieth without issue of

of his body; the heir of the Donor, or he who hath the reversion of the Land shall have the Writ *de Ex gravi Querela* in the nature of a *Formedon* in the Reverter, to recontinue the Possession of the Land to him who hath the Reversion. And first for Land devised in Tail within the City of London; the form of the Writ for the heirs of the Devisee in Tail, is such:

40 Aff. 41.
Br. Castrum
38.

Locus imper-
fectus,
See the next
Writ.

Rex Majori & Vic. Lond. salutem: Ex gravi querela I. filie E & M. sororis ejusdem I. accepimus, quod cum secundum consuetud. in eadem civitate hactenus obtentam & approbatam liceat unicuique Civis ejusdem civitatis tenementa sua in eadem civitate in testamento suo in ultima voluntate sua tanquam catalla sua legar. cuicumque voluerit, ac S. quondam Civis civitatis prædict. in testamento in ultima voluntate sua quatuor shopas cum pertin. in eadem civitate existent. vel quatuor mesuagia, & decem shopas cum pertin. &c. E. habend. sibi & hered. de corpore suo exeuntibus legasset R. & S. uxori ejus, duo mesuag. & iij. shopas inde F. & iij. shopas inde præfat. I. & M. filiabus & hered. ejusdem in E. deforc. minus juste in ipsarum I. & M. dispend. non modicum & gravamen, & contrv. voluntatem testatoris prædict. ac contr. cons. prædict. Et quia eisdem I. & M. injuriar. nolimus in hac parte: vobis mandamus, quod vocat. coram vobis partibus præd. auditisque hinc inde earum rationibus, inspectoque tenore testamenti prædict. eisdem I. & M. plenam & celerem justic. inde fieri faciat. prout de jure & secundum consuet. prædict. fuerit faciend. hactenus in casu consimili ibid. fieri consuevit, vel eisdem I. & M. in hac parte fieri faciat. debitum & festinum justic. complementum, prout, &c. Teste, &c.

And it appeareth by that Writ, That the King commandeth them to do according to the custom of the City, or to do justice to the parties, by which it seemeth, that the Mayor upon that Writ shall award Process to summon the party who is Tenant of the Land, to appear at a certain day, to answer to the Plaintiff in the nature of a Summons in a *Præcipe quod reddat*: and when he cometh the Plaintiff ought to shew the Testament, and to count upon the same, and to alledge seisin of the Land in the Testator, and how that he deviled the same to him. And that the Defendant then plead thereunto, or the Mayor and Sheriffs ought to proceed therein according to the usage of the City. And that Writ may be sued against several Tenants; and then the Mayor ought to make several Precepts unto every Tenant. And if the Land be in another Burrough, then the Writ shall be such:

Rex

Rex ballivis suis de magn Yarmouth, salut. Ex gravi querela, &c. (ut supra) quod secundum cons in Villa dicta hactenus, &c. liceat unicuique Burgensi ejusdem Vill. tenementa sua, quæ sibi acquisierit in eadem Villa, in testamento suo in ultima voluntate sua, &c. (ut supra) Ac N. Burgensi ejusdem Vill. unum mesuagium cum pertin. quod sibi acquisierit in eadem Villa, in testamento suo in ultima voluntate sua W. & heredibus suis legasset, R. de E. mes. prædict. post mortem præd. N. ingress. illud præfato W. deforc. minus juste, in ipsius W. &c. (ut supra) & quia nolumus, &c. (ut supra.)

F And if a man deviseth his Lands to his wife for life, the remainder over to another in Fee, and the Tenant for life entreth, and is seised by force of the devise and dieth, and he in the remainder is deforced, he shall have such Writ :

Ex gravi querela, &c. (usque ibi) voluerit, ac M. quondam Civis ejusdem civitatis D. uxori suæ in testamento suo in ultima voluntate sua, quatuor shopas cum pertin. in I. quas sibi acquisierit in eadem civitate, ad vitam ipsius D. habend. legasset, ita quod post decess. ejusdem D. præf. shopæ cum pertinent præf. E. & hered. suis remanerent, N. quæ shopas illas tenet ex dimissione præd. D. eas præf. E. post mortem ejusdem D. deforc. minus juste, in ipsius E. dispendium, &c.

G And if a man do devise Lands by his Testament in Tail, the remainder over in Tail unto another, and the first Tenant in Tail entreth, and dieth without issue; and the second Tenant in Tail entreth in his remainder and dieth without issue, the heir of the Donor shall have a writ of Ex gravi Querela in this form :

Ex gravi querela, &c. (ut supra) ac I. P. quondam Civis civitat. præd. pat. præd. S. cujus hæres ipsa est, unum mesuag. cum pertin. in suburbis Lond. M. fil. ipsius I. & hered. de corpore ipsius, M. legitime procreandis habend. legasset, Ita quod si idem M. sine hered. de corpore suo legitime procreat. obiret, prædict. mesuag. &c. R. fil. præd. I. & hered. de corpor. præd. R. legitim. procreat. remaneret L. capellan. cantar. ad Altar. S. Joh. in novo opere in Ecclesia S. Pauli Lond. pro anima Magistri W. quond. canon. ejusd. Ecclesie ordin. prædict. mesuag. cum pertin. post mortem præd. M. & R. præf. S. ad quem diem mesuag. cum pertin. reverti debet, eo quod uterq; M. & R. obiit sine hered. de corpore suo legit. procreat. ut dic. deforc. minus juste in ipsius S. dispendium, &c.

H And it appeareth by the subsequent writ, That when a man doth make a devise of his Lands in London, and also of his goods, and makes Executors, &c. then the first Executors shall prove the same before the Ordinary; and then after they

Writ of Ex gravi Querela.

they shall bring the same before the Mayor into *London*, &c. and it shall be there Enrolled, and then upon that Enrolment the Mayor upon a Writ of *Ex gravi querela* sued for the Lands shall do execution, and such Process as upon a Fine of Lands, &c. and the Writ is such :

Rex Majori, &c. Vic. Lond. salutem. Cum ut accepimus, secund. consuetudinem in eadem civitate hactenus obtentam & approbatam, testamenta in quibus laica tenementa in predict. civitate legata fuer. fact. prius probatione eorund. testamentor. coram Ordinar. pro bonis & catallis in eisdem legatis, coram vobis in Hustingo nostro Lond. approbati & irrotulari debeant ad exec. tenementor. sic legator. faciend. Ac jam ex relatu R. consang. I. de P. nuper civis Lond. accepimus, quod licet pref. I. anam shopam & duo solar. cum pertin. in Parochia S. Mich. Lond. in eadem civitate, in testamento suo in ultim. voluntate sua prefat. R. legasset, habend. & tenend. sibi & hered. suis in perpetuum, idemq; testam. prout moris est, coram Ordin. probatum, existit, tamen E. quæ fuit uxor I. de P. & A. exec. testamenti ejusdem I. testamentum illud penes se detinent, non permittentes illud in Hustingo præd. irrotulari, ut præd. est, in exher. ipsius R. periculum manifestum, ac contra consuet. præd. Nos nolentes eid. R. injurari in hac parte, vobis mandamus, quod vocatis coram vobis pref. execut. & auditis tam præd. R. quam præd. execut. in hac parte rationibus, ulterius in præmiss. faciatis, quod de jure, &c. & secund. consuetud. civitatis præd. fuerit faciend. & hactenus in casu consimili ibidem fieri consuevit.

And by that Writ it appeareth, That if a man have Lands devised unto him in *London* by Will, that he shall have a Writ unto the Mayor, to compell the Executors to bring in the same to be proved before them in *London*, and Enrolled in the Hustings.

And if a man have Lands devised unto him in *Oxford*, the Custom is, That the Testament shall be proved there before the Ordinary, and afterwards it shall be proved before the Mayor of *Oxford*, &c. And if the Mayor will not prove the Will, then he to whom the devise is made, and also the Executors, who took any advantage of Administration by that Will, shall have a Writ out of the Chancery directed unto the Mayor and Bailiffs, commanding them to prove the Will, and thereupon they shall have an *Alias* and a *Pluries*, vel *causam nobis significes*, &c. and afterwards an Attachment against them if need be, returnable in the King's Bench, or Common Pleas.

And by the same reason he shall have the like Writ against the Mayor of *London* to prove such Will, and to Enroll the same,

same, and upon that Cui, Alias and a Pluries against the Mayor of London, and Attachment if need be.

And by the same reason it seemeth reasonable, that a man shall have a Writ directed to the Ordinary to prove the Will of any man, &c. and the form of the Writ is such :

Res Majori & Ballivis Vill. Oxon. salut. Querelam T. & M. uxoris ejus accepimus continent. quod cum secund. consuet. in will. prædicta usitatam & hæcenus approbatam, testamenta burgensium ville prædict. ibidem decedentium, super tenement. & possessionibus, si sint ibidem legata, primo coram Ordinariis & secundariis coram vobis in cur. ville prædict. probar. debeant. & consuever. temporibus retroactis, ac executores testamenti N. cum præf. T. & M. postquam testamentum prædict. N. coram Ordinariis ville prædict. prout moris est, probatum fuit, frequent. illud coram vobis iterato proband. detuler. juxta consuet. prædict. occasione quorund. tenementor. in suburbio ejusdem vill. quæ præd. N. in ultima voluntate sua eidem M. legaverit, sicut in testamento prædict. plenius continet. Vos tamen probationem illam hæcenus recipere recusastis, & adhuc recusatis minus juste, per quod nec prædict. executores, nec præf. T. & M. super tenem. prædict. aut aliis tenementis per quod N. legatis administrationem consequi possint, in retardationem executionis testament. prædict. & contra voluntatem præd. N. nec non damnum ipsorum T. & M. & execut. non præd. modicum damnum & gravamen: Nos igitur executoribus T. & M. injuriari nolentes in hac parte, vobis præcipimus, sicut alias præceperimus, quod si ita est tunc præfat. execut. T. & M. plenam & celer. justitiam in hac parte fieri fac. prout de jure & secundum consuet. præd. in casu consimili fuerit faciend. ita quod querela ad nos inde non perveniat iterata, vel causam nobis significetis, quare mandatis, &c. Teste, &c.

And it is reasonable that it be so done in every other City where Lands be deviseable by Will, and are devised by Will, That the Executors and the Devisee shall have such actions against the Ordinary, and also against the Bailiffs of the Town and Burroughs to prove such Wills.

And in place of a Formedon in the Descender in Tenements devised, is such Writ :

Ac A. quondam civis, &c. M. filie sue quoddam mesuag. &c. habend. sibi & hered. de corpore suo exeunt. legasset, T. Mesuagium prædict. ingress. illud post mortem præd. M. & W. filii & hered. ejusdem M. præf. L. fratri & hered. prædict. W. deforc.avit minus juste, in ipsius, &c.

And it seemeth, that when the Tail is once excepted before of the Devise in the Tenant in Tail, or in the Tenant for term

term of life, that then he in the Remainder, or heir of Tenant in Tail, have a *Formedon* in the Descender by the course of the Common Law after the Statute of *West.* 2. according to the common form upon a gift made in Tail by Deed.

And there is another form of Writ in the Register in nature of a *Formedon* in the Descender. C

And if a man in *London* devise Land unto a woman for term of her life, and afterwards to her Executors to sell, and to convert the money to her own use, by the custom of *London* that Testament ought to be proved before the Ordinary, and afterwards before the Mayor, &c. and to be enrolled, &c. If the Testament be proved before the Ordinary, and afterwards one Executor doth detain the same, and will not prove it before the Mayor, &c. the other Executor shall have a special Writ directed unto the Mayor and Sheriffs of *London*, commanding them to call the Executors before them, and to see the Testament, &c. and to do right according to the custom of the City, and according to the Law, &c. which writ appeareth in the Register. B

2 & 3 Ma.
Dyer.

Vid. Perkins
164.
That he in
the Rem.
shall not
take benefit
of the
Condition
by way of
Entry.

And if a man doth devise Lands to his wife for the term of her life upon condition that if she marry, that the Lands shall remain unto his Son in Tail: and for default of such issue, the remainder to the right heirs of the Donor in fee, Now if the wife taketh a husband who occupieth the Lands, and he in the remainder dieth without heir of his body; the right heir of the Donor shall have a special Writ of *Ex gravi querela* directed unto the Mayor and Sheriffs of *London*, reciting that special Devise, and the matter as it is, commanding them to call the parties, and to hear them, and to do right, &c. And by that it appeareth, that he in the remainder shall have advantage of the condition if it be broken; but the same shall be by way of action, and not by entry: for the condition not performed, which Writ appeareth in the Register. P

Writ of Entre ad terminum qui præteriit.

A Writ of *Entre ad terminum qui præteriit* lieth where a man leaseth Lands or Tenements for term of life, or years, and afterwards the term expireth, and he to whom the Lease was made, or a stranger entrench upon the Lands, and occupieth the same, and deforceth the Lessor, the Lessor or his heirs shall have the Writ. D

And that Writ lieth in the *Per*, *Cui* and *Post*. For if the Lessee hold over his term, and afterwards maketh a Feoffment, E

ment, the Lessor or his heirs may have that Writ against the Feoffee in the *Per*; and if the Feoffor maketh a Feoffment over, he may have it against the second Feoffee in the *Per* and *Cui*, and against the third Feoffee in the *Post*. And the form of the Writ is such :

21 E. 3. Brief
308. One
brought the
Writ upon
a Lease by
his trefaile.

Rex Vic. &c. Præc. A. quod reddat B. unum gurgitem, &c. in quem id A. non habet ingressum, nisi per C. cui præd. B. illud dimisit ad terminum qui præteriit, &c. Et nisi fecerit, &c. Et præd. B. fecerit te securum, &c.

And in the *Post* the Writ is : *Et in quod idem A. non habet ingressum, nisi post dimissionem, quam idem B. inde fecit D. ad terminum qui præteriit, & quod post terminum illud ad præf. B. reverti debet ut dic. & unde querit. quod præd. A. ei desorc. &c. & nisi, &c.*

And by those words *Unde queritur*, in any Writ of Entry in the *Per* and *Cui*, but only in a Writ of Entry in the *Post*.

P But if a man will bring a writ of Entry, *Ad terminum qui præteriit* of his Father, Mother, or other Ancestor, then there behoveth to be in the Writ the words, *quod clamat esse jus & hereditatem suam*; and the form of the Writ is such :

Rex Vic. &c. Præc. A. quod, &c. redd. B. unum mesuag. cum pertin. in N. quod clamat esse jus & hered. suam, & in quod idem A. non habet ingressum nisi per D. patrem, vel matrem, vel alium antecess. præd. B. cujus heres ipse est q. illud ei dimisit ad termin. qui præteriit ut dicit, & nisi fecerit, &c.

And in the *Per* and *Cui*, thus : *quod clamat, &c. & in qd. &c. nisi p. C. cui D. pat. vel alius antecessor præd. B. cujus heres ipse est, illud dimisit ad termin. qui præteriit, &c.* And in the *Post* thus, *Nisi post dimission. quam R. ac prædict. B. &c. cujus hered. ipsi sunt, &c. or thus, Quam C. pater præd. B. & avus prædict. S. cujus hered. ipsi sunt inde fecit H. ad termin. illum qui præteriit, & quod post termin. illum ad præfat. &c. reverti debet, ut dic. & und. quer. quod prædict. A. eis desorc. &c. nisi, &c.*

And in every Writ of Entry which a man demandeth of the possession of his Ancestor, he ought to have these words in the Writ, *Quod clamat esse jus & hered. &c.* but of his own possession he shall not have those words in the Writ, but only in a *Cui in vita*, brought by a woman of her inheritance aliened by her husband, for there she shall have in her writ these words, *Quod clamat esse jus & hereditatem suam, &c.* but the same is where the woman claimeth an Estate in Fee-simple by the writ, for if she claim but an Estate in Tail, or a Freehold by her *Cui in vita*, then the writ of *Cui in vita* shall make a special mention of that Estate, &c.

If

If a man Lease a Manor for life or years, unto which an advowson is appendant, and afterwards the Lessee doth make a Feoffment of the Manor in Fee, and taketh back an estate of the Manor, except the advowson, to him for life, If the Lessor bring a Writ of Entry, *ad terminum qui præteriit*, of the Manor against the Lessee, and doth not make exception of the Advowson; the Writ shall abate for non-t tenure of the Advowson upon the matter shewed, as appeareth by the Register.

The Aunt and the Neece shall joyn in this Writ of *ad terminum qui præteriit*, as appeareth by a Writ before mentioned. H

And if a man maketh a Feoffment in Fee upon Condition, that if he pay a certain sum of Money at a certain day to the Feoffee or his heirs, that then he shall have his Land again, and that he may enter, if he pay the Money at the day, and afterwards the Feoffee will not suffer him for to enter: The Feoffor shall have the Writ of *ad terminum qui præteriit*, because that when he payeth the Money, the other hath no term in effect; and if he should not have this Writ, he could not have any remedy but to enter, &c. and thereupon to have an Assise.

And *M. 5 E. 3.* it was adjudged that the Plaintiff should recover in such action upon such matter pleaded and shewed; But I do not perceive how the same could be maintained by reason, because the Fee-simple is not properly said a term, for then the Lord by Escheat should have a Writ of *ad terminum qui præteriit*, if his Tenant dieth without heir, where he cannot have a Writ of Escheat; and in *terminum qui præteriit*, the Lease alledged in the Count is traverseable.

If the Husband and Wife Lease the Wives Lands for A years, and the Husband dieth, and the Termor holdeth over his term, the Wife shall have a Writ of *ad terminum qui præteriit* if she will, &c. but she ought for to count that she and her Husband Leased the Land, &c.

And it appeareth in *8 E. 2. Itin. Canc.* that the Grantee B in reversion shall have a Writ of *ad terminum qui præteriit* against the Lessee, or his Heir, or Assignee, and yet there is no such Writ in the Register.

Writ of Dum fuit non Compos Mentis.

C **T**HE Writ of *Dum fuit non Compos Mentis*, lieth where a man, who is not of *sane memoire*, alieneth his lands or Tenements in Fee-simple or in Fee-tail, for life or for years, if he be afterwards divorced by his Alienee or Lessee, then he himself shall have this Writ against his Alienee or Lessee, notwithstanding his own alienation, or his own lease; and the same appeareth by Writs in the Register, which are of such form:

Rex Vic. &c. Præc. A. quod reddat B. unum mes. & xx. acr. terr. cum pertin. quæ id. B. ei dimisit, dum non fuit Compos Mentis, suæ, ut dicit, & nisi fecerit, &c. Vel sic, In quod idem A. non habet ingressum nisi per C. cui præd. B. illi dimisit, dum non fuit compos mentis, &c. Vel sic, in the Post, In quod idem A. non habet ingress. nisi post dimission. quæ præd. B. dum non fuit compos mentis suæ inde fecit D. & unde queritur, &c.

D And some have said, that Writ lieth not by him who alieneth the land, because he shall not disable himself nor contradict his own deed; but that seemeth to be little reason, for this is an infirmity which cometh by the act of God, and it standeth with reason, that a man should shew, how he was visited by the act of God with infirmity, by which he lost his memory and discretion for a time; as if an Infant within the age of twenty one years doth make a Feoffment in Fee, or a lease for years, he himself shall avoid his Feoffment or Lease, as well within age, as of full age, although he shall not have a *Dum fuit infra ætatem* within age, because the writ doth suppose him to be of full age, but an Infant of the age of 14 years hath discretion, as hath been adjudged at such age, and if he at such age commit felony, he shall be hanged for the same, and yet his Feoffment, Lease or Grant, shall not bind him before the age of 21 years; because he hath not perfect discretion or knowledge what he ought to do, or what is to his profit or disadvantage before such age; and therefore he shall alledge that he was within age at the time of the Feoffment, Grant or Lease made by him; by which it appeareth, that he shall alledge, that he had not perfect discretion at that time, for that nonage is an infirmity of nature, and cometh by the act of God; and *a fortiori*, then he who is of *non sane memoire* shall alledge that he was not of *sane memoire* at the time of his Feoffment or Grant for he who is of unsound memory, hath not any manner of discretion; for if he kill a man it shall not be felony, nor

E I

murder,

6. 9. 8. 247. 6.
4. C. 123

Plow. Cote
19. a.

5 E. 3. Con.
24. contra.

murther, nor he shall not forfeit his lands or goods for the same, because it appeareth that he hath not discretion, for if he had discretion he should be hanged for the same, as an Infant who is of the age of discretion, who committeth murther or felony shall be hanged for the same.

And it appeareth in *Britton*, that in debt upon a bond, the defendant said, that he was not of *Sana memoria* at the time of making the Bond, and holden it was a good Plea.

Stanford.
Pecrog. 34.

And if an Idior doth release all his right by deed; yet E if it be afterwards found by office that he is an Idiot, the King shall seise the Land, and the Release shall not bind, &c. *Qd. vide* in title *Scire fac'*, P. 32 E. 3. in the Abridgments.

But in the book of Assises, *Anno* 35 E. 3. The Tenant in an Assise pleaded the Release of the Plaintiff, and the Plaintiff said; that he was not then of *Sane memoire*, &c. And there the opinion of two Justices was, that he should not have that Plea; but I do not much regard their opinion, for the reasons aforesaid.

Dum non compos mentis was brought of the alienation by a Son, and admit. ted 18 E. 3. Sc. fac. 10. 12 E. 4. 6. 39 H. 6 42.

And it appeareth in 7 Henry 4. 5. That a Feoffment of an Idior made by Letter of Attorney is void; and so it seemeth to be of a man of *Non sane memoire*.

And if a man of *Non sane memoire* alieneth his land in Fee and dieth, his heir shall have such Writ as he may enter, as his ancestors might have entred, as well as if an Infant within age had aliened his Lands, &c.

And in 25 E. 3. in the Book of Assises, a man of *Non sane memoria* made a Feoffment in fee, and took back an estate to himself for life, and there it was agreed and admitted that the same was a remitter, and thereupon issue was taken, that he was of perfect memory, &c. and that was found by Verdict; which see in the Title of Feoffments in the Abridgments.

And the Writ for the heir upon the alienation of his Ancestors shall be in such form:

Rex Vic'. &c. Præcipe A. quod, &c. reddat. B. 20 acr. terr. cum pertin. in N. quas clam. esse jus & hereditatem suam, & in quas idem A. non habet ingressum nisi per C. vel alterum antecess. prædict. B. cujus hæres ipse est, qui illas ei dimisit, dum idem C. non fuit compos mentis sue, ut dic', &c.

And thus in the *Per & Cui*:

Quas clamat, &c. & in quas, &c. nisi per C. cui D. avus prædict. B. vel alius antecess. prædict. B. cujus hæres ipse est, illas dimisit, dum idem D. non fuit compos mentis sue.

Or thus in the *Post*.

Quas clamat, &c. Et in qua, &c. nisi post dimissionem, quam

Writ of Intrusion.

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quam C. proavus, vel alius antecessor. prædict. B. cujus hæres ipse est, dum idem C. &c. inde facit H. ut dicit, & unde querit. &c.

C And 14 An. of the King was such Writ granted :

D Præcip R. quod, &c. reddat B. unum redditum trium panum, septem lagenarum cervisie, & septem ferculorum per septimanam cum pertin. in C. & quem idem B. ei dimisit, dum non fuit compos mentis sua, ut dic. & nisi, &c. And the Proceſs is Grand Cape & Petit Cape, as in other Præcipe quod reddat.

Writ of Intrusion.

E THE Writ of Intrusion lieth, where Tenant for life, or in dower, or by the courtesie, dieth seised of such estate for life, and after their death a stranger doth intrude upon the land, he in the reversion shall have that Writ against the intruder, and the Writ shall be such :

F Rex Vic', &c. Præcipe A. quod iusto, &c. reddat B. unam carucatam terr. cum pertin. in N. quam clamat esse jus & hereditatem suam, & in quam idem A. non habet ingressum nisi per intrusionem quam in illam fecit post mortem C. quæ fuit uxor D. quæ illam tenuit in dotem de dono præd. D. quondam viri sui patris vel fratris præd. B. cujus hæres ipse est, ut dicit, & nisi, &c.

And in the Per thus :

Et in quod idem A. non habet ingressum nisi per C. qui illam dimisit post mortem D. quæ fuit uxor E. quæ illud tenuit in dotem de dono prædict. E. quondam viri sui.

And in the Per and Cui thus :

Et in quod idem A. non habet ingressum nisi per C. cui D. illud dimisit, quæ se in illud intrusit post mortem, &c.

And in the Post the Writ is thus :

In quam idem A. non habet ingress. nisi post intrus. quam C. in illud fecit post mortem D. quæ fuit uxor E. quæ illud tenuit in dotem de dono prædict. E. quondam viri sui fratris prædict. B. cujus hæres ipse est, & quod post mortem prædict. D. ad præfat. B. reverti debeat, ut dicit, & unde queritur, &c. & nisi, &c.

And so that Word, & unde queritur was put in every Writ of Entry in the Post.

G And if a Woman recover dower against him in the Reversion, or against his heir, and afterwards she dieth seised of that estate, and a stranger doth intrude into the Land, Then he in the reversion shall have a Writ of Intrusion,

And in the Writ mention shall be made of the recovery, thus, *In quod idem A. non habet ingressum nisi per intrusionem quam in illud fecit post mortem C. quæ fuit uxor D. quod illud in Curia nostra coram Justiciariis nostris apud W. per breve nostrum per considerationem ejusdem Curie recuperavit, ut dotem suam quam eam contingebat de libero tenemento, quod fuit prædicti D. quondam viri sui in eadem villa versus prædicti B. Vel sic, versus W. patrem vel alium antecessorem prædicti B. cujus hæres ipse est, ut dicit, & nisi, &c.*

And so she shall have another Writ of another form, where she recovereth her Dower against the heir of her husband, and after the heir granteth the reversion unto the said B. and then the Tenant in Dower dieth seised, and a stranger abateth, the said B. shall have a Writ of Intrusion against the stranger, and the Writ shall rehearse the whole special matter, which Writ appeareth in the Register.

And the Aunt and the Neece shall join in a Writ of Intrusion, and if the heir doth assign Dower unto his Mother, and then commits felony, for which the Lord claimeth the reversion, and granteth the same to one in fee, to whom the Tenant attorneth, and afterwards the Grantee of the reversion hath issue two daughters, and dieth, and one of them hath issue and dieth: Now the Aunt and the Neece shall join in that Writ, &c. and the Writ shall be such:

Rex Vic', &c. Præcipe A. quod juste, &c. reddat B. & M. sorori ejus, & P. & F. fratri ejus unam mesuag. &c. In quod idem A. non habet ingressum nisi post intrusionem quam H. in illud fecer. post mortem I. quæ fuit uxor W. quæ illud tenuit in dotem de, &c. quondam viri sui de N. patre prædicti B. & M. & avo prædicto P. & F. cujus hæres ipsi sunt, ex assign. T. capital. dom. feodi illius, de quo prædicto I. illud tenuit in dotem ratione felonie per W. de S. filium & hæred. præd. W. facta, ut dicitur. Et quod post mortem prædicti I. ad præfat. B. M. P. & F. reversioni debet per formam assign. prædicti, ut dicunt, & unde queruntur, &c.

[204] And if a man intrude after the death of Tenant by the A the Courtesie, the Writ of Intrusion shall be such:

Præcipe A. quod, &c. reddat B. &c. quod clamat, &c. Et in quod idem A. non habet ingressum, nisi per intrusionem quam in illud fecit post mortem D. qui illud tenuit per legem Angliæ post mortem C. quondam uxoris suæ, matris vel amicæ præd. B. cujus hæres, &c. ut dicit.

And in the Per thus:

Nisi per C. quod illud ei dimisit, qui se in illud intrusit, &c. ut supra.

And

And in the Per and Cui thus :

Nisi per C. cui D. illud dimisit, quod se in illud intrusit, &c.

And in the Post thus :

Nisi post intrus. quam W. in illud fecit post mortem C. qui illud tenuit per legem Angl. post mortem D. quondam uxoris sue, matris præd. B. cujus hæres, &c. Et quod post mortem prædict. C. ad præfat. B. reverti debet, ut dicit & unde queritur, &c. & nisi, &c.

B And if a man doth intrude after the death of Tenant for life ; then he in the reversion shall have such Writ of Intrusion.

Rex Vic. &c. Præcipe A. quod juste, &c. reddat B. &c. in quod idem B. non habet ingressum, nisi p. r intrusionem quam in illud fecit post mortem C. cui prædict. B. vel cui D. pater vel alius antecess. prædict. B. cujus hæres ipse est, illud dimisit ipsius W. &c.

And in the Per thus :

In quod idem A. &c. nisi per C. qui illud ei dimisit qui se in illud intrus. post mortem W. cui prædict. B. vel R. patr. vel alius antecess. prædict. B. cujus hæres, &c. illud dimisit ad vitam ipsius W. &c.

And in the Per and Cui thus :

In quod, &c. nisi per C. cui D. illud dimisit, quod se in illud intrusit, &c.

And in the Post thus :

Nisi post intrus. quam D. in illud fecit post mortem I. cui B. vel alius antecess. prædict. B. cujus hæres, &c. illud dimisit ad vitam ipsius I. Et quod post mortem ipsius I. ad præf. B. reverti debet, ut dicit, & unde queritur.

C And in the Register there are other forms of Writs, where the reversion of Tenant is granted by fine, or otherwise which shall be *ex assignatione*.

D And the heir in tail shall not have a Writ of Intrusion ; if a man do intrude after the death of Tenant in Dower, or of Tenant by the Courtesie, or after the death of Tenant for life ; he in the reversion in tail shall not have a Writ of Intrusion, but he shall be put to his Writ of *Formedon* ; for that Writ lieth for him who hath the reversion in Fee simple, or for term of life, and not for him who hath the Reversion in tail or for term of years ; for it lieth not but for him who hath a Freehold, after the death of Tenant for term of life, or of Tenant in Dower, &c.

And he in the remainder shall have a Writ of Intrusion, if a man do intrude after the death of Tenant for life ; and so

Writ of Cui ante Divortium.

the Assignee of the remainder shall have such Writ. E

If lands be given two, and to the heirs of one of them, and he who hath the fee dieth, and then the Tenant for life dieth, the heir of him in remainder shall have such Writ.

In quod, &c. nisi per intrusionem quam in illud fecit post mortem C. quæ fuit uxor D. quæ illud tenuit ad vitam suam ex d. miss. quam R. inde fecit eidem C. & præfat. D. quondam viro suo, & hered. ipsius D. patris prædicti. B. cujus hæres, &c. ut dicit, & nisi, &c. And the Process in that Writ is, *Summons, Grand Cape and Petit Cape.*

Writ of Cui ante Divortium.

THE Writ of *Cui ante Divortium* lieth, where the husband alieneth the wife's Land which she had in Fee-simple, or in Tail, or for life unto a stranger in Fee-simple, in Fee-tail, or for life, and afterwards the Husband and Wife are divorced, then the Wife shall have that Writ against the Alienee: and the form of the Writ shall be such:

Rex Vic', &c. Præcipe A. quod juste, &c. redd. B. quæ fuit uxor D. unum mesuagium cum pertin. in N. quod clamat esse jus & hereditatem suam & in quod, &c. nisi per prædicti. D. quondam virum ipsius B. quod illud ei dimisit, cui ipsa ante divor. inter eos celebr. contradicere non potuit. G

And that Writ lieth in the *Per, Cui, and Post*, as doth the other Writ of *Cui in vita*. H

And if the husband do alien unto an Abbat in Fee, and afterwards the husband dieth, the wife shall have a Writ of *Cui ante divortium*, in the *Post*, against the Successor of the Abbat, and the form of the Writ shall be thus:

In quod idem Abbas non habet ingressum nisi post dimiss. quam prædicti. D. quondam vir ipsius B. ipsa ante divor. contradic. non potuit inde fecit L. quondam Abbat. de B. ut dic. & inde queritur, &c. K

And the heir shall have a *Sur cui ante divortium*, where the wife dieth before the action brought, as well as he shall have a *Sur cui in vita*: but of an estate Tail, the heir shall not have a *Sur cui in vita ante divortium*, but shall be put to his *Formedon* in the Descender.

And the Aunt and the Niece shall join in that Writ, as they shall do in a *Sur cui in vita*; and the Process is, *Summons, Grand Cape and Petit Cape.* L
M

Writ

Writ of Causa matrimonii praelocuti.

A **T**HE Writ of *Causa Matrimonii praelocuti* lieth, where a [205]
 Woman giveth lands unto a man in fee-simple, unto
 the intent that he shall marry her, and afterwards he will
 not marry within convenient time when he is required by
 the Woman. Then the Woman shall have that Writ, and
 the form of the Writ is such :

B *Rex Vic', &c. Praeipe A. quod iuste, &c. redd. B. unum me-
 suagium, quod eadem B. ei dimisit causa matrim. inter eos praelo-
 cuti, quo eam duxisse debuit in uxorem, & nondum duxit, ut dic',
 &c.*

And in the *Per* and *Cui* thus :

*In quod, &c. nisi per C. cui praedict. B. illud dimisit causa
 matrimonii, &c. & non duxit, ut dicit, Et unde queritur,
 &c.*

C And it seemeth that that Writ lieth for the woman,
 where she giveth lands to a man for term of his life, for the
 intent to marry her, as well as where she giveth it in fee-
 simple. But if she giveth it to a man in tail for to marry her
 &c. although he will not marry her, it seemeth she shall not
 have that Writ against him, by that means to avoid and
 defeat the estate tail; for that shall be contrary to the Sta-
 tute of *Donis conditionalibus*. And a man upon a condition
 in law shall not make void the Statute. For the Statute
 makes a law certain by express words of gift in tail. And
 then it is not reason that it should be aneinted by intend-
 ment, or by a thing averrable, which is not expressed, and
 shall be taken contrary to the Statute. And the heir shall
 have that Writ as well as the woman her self, and the Writ
 shall be :

D *Praeipe A. &c. quod redd. B. &c. quod clamat, &c. & in* But if he ex-
quod non habet ingressum nisi per C. matrem praedict. B. cujus press an En-
haeres ipsa est, quae illud ei dimisit causa matrim. &c. & nondum try if he
duxit, &c. & nisi, &c. marry, then
 he may all-
 en, but till
 alienation
 he is selfed
jure uxoris.
 5 E. 2. Br.
 Cond. 204.

F And it may be in the *Per*, *Cui* and *Post*, as the case is.

E And also the Aunt and the Neece may join in the Writ.

And if a man do give lands unto a woman unto the intent
 to marry him, although that the woman will not marry
 him, &c. he shall not have a Writ *Causa Matrimonii praelocu-
 ti* in that case, and also that the woman do after marry him;
 yet the woman shall hold the Land to her and her heirs,
 &c. and if the husband do afterwards alien them, she shall
 have a *Cui in vita* for those Lands

If a woman do enfeof a stranger by deed of Land in Fee, to the intent to enfeof her, and one who will be her husband, if the marriage doth not take effect she shall have the Writ of *Causa matrimonii prælocuti* against the stranger, notwithstanding that the deed of Feoffment be absolute; quod vi. in title *Affise*, 34 E. 3. lib. *Affise*.

14 H. 8. 19. A Woman did enfeof a man upon condition that he should take her to wife, and he had a wife at the time of the Feoffment, and afterward the woman for not performing of the condition, entred again into the land, upon the second Feoffee, and her entry was adjudged lawful, and the condition is good, Anno 40 E. 3. lib. *Aff*.
 Brudnell.
 24 H. 8. 9. Its a good condition.
 50 Aff. 17. second Feoffee, and her entry was adjudged lawful, and the condition is good, Anno 40 E. 3. lib. *Aff*.
 Condit. 17.
 Et Br. Condit. 119. And the Husband and wife may sue that Writ of *Causa Matrimonii prælocuti* against another who ought to have married her.

§ E 2. Entrie And if a Woman maketh a Feoffment in Fee by Deed, K
 78. ac. of a reserving Rent, then she shall not have that Writ of *Causa Condition Matrimonii prælocuti* for the Rent reserved, because it is expressed. proved that the Reservation was the cause of the Feoffment
 Note 3 & 4 but if she hath a Deed to shew and prove that the Feoffment was to the intent that he should marry her, then she
 M. Dy. 146. one cannot shall maintain her action notwithstanding the reservation
 aver a consideration against a consideration made of the Rent.
 expressed by And a woman may sue *Causa Matrimonii prælocuti* without any writing shewed to prove the same, where she maketh a Feoffment without Deed to a man in fee, to the intent to marry her, &c. and the Process is *Summons*, *Grand Cape* and *Petit Cape*, &c.
 Deed. Vid.
 24 El. Dy.
 211, 212.

Writ of Entrie in Casu proviso.

THE Writ of *Entrie in Casu proviso* is given by the Stat. of Gloucester. cap. 7. and that Writ lieth where Tenant in Dower doth alien in fee, for life or in tail, the land which she holdeth in Dower; he who hath the Reversion in fee, or in tail, or for life, shall maintain that Writ against the Alienee; and against him who is the Tenant of the freehold of the land during the life of the Tenant in Dower, &c. And the Writ may be made in the *Per*, *Cui* and *Post*, and the Writ shall be such:

Rex Vic. &c. *Præcipe* A. &c. quod redd. B. &c. quod clamat, &c. Et in quod A. &c. nisi per C. que fuit ux. D. qui illud ei dimisit, que illud tenuit in dotem de dono præd. D. quondam viri sui, patris vel alterius, antecessoris prædict. B. cuius hæres, &c. Et quod post dimiss. per ipsam C. præfat. A. contra formam

formam statut. Glouc. de communi consilio regni nostri inde proviso, fact. in feod. ad pref. B. reverti debet per formam ejusdem statuti, ut dicit, & nisi, &c.

And in the Per thus :

In quod idem A. non habet ingressum nisi per C. cui D. quæ fuit uxor E. illud dimisit, quæ illud tenuit in dotem, & quod post dimiss. &c.

And in the Post thus :

Præcipe A. quod, &c. redd. B. &c. quod clamat, &c. & in quod, &c. nisi post dimissionem quam C. quæ fuit uxor D. quæ illud tenuit in dotem de dono prædict. D. quondam viri sui, patris prædict. B. cujus hæres ipse est, inde fecit F. & quod post dimission. per ipsam G. &c. (usque ibi) revertere debet per formam ejusdem statuti, ut dicit, & unde queritur, & nisi, &c.

A And if a woman do recover her Dower against the heir, and afterwards doth alien in fee, the heir shall have the writ of Casu proviso ; and in the writ he shall mention the recovery, as he shall do in a writ of Entrie ad communem legem, upon an alienation made by Tenant in Dower, &c. And although a woman alien in tail, or for life, yet the writ is always of one form.

B If a man grant the reversion of lands which are holden of his inheritor in dower to another, and the Tenant attorneth, and afterwards the Tenant in Dower doth alien in fee, the Grantee of the Reversion shall have such writ de assignatione.

Præcipe A. quod, &c. redd. B. &c. & in quod, &c. nisi per C. quæ fuit uxor D. quæ illud de prædict. D. tenuit in dotem de dono prædict. D. quondam viri sui ex assignatione, quam W. filius & hæres prædict. D. inde fecit præfat. B. & quod post dimission. &c.

And if the Heir grant the reversion in Fee, and the Tenant attorneth, and afterwards the Grantee granteth the same over, and the Tenant doth attorn ; and afterwards the Tenant in Dower doth alien the Fee, the third Grantee of the reversion shall have such writ De casu proviso.

Rex Vic. &c. Præcipe A. quod, &c. reddat B. &c. quod clamat, &c. & in quod, &c. nisi per, vel post dimissionem, &c. (as the case is) quam C. quæ fuit uxor D. quæ illud tenuit in dotem de dono prædict. D. quondam viri sui de præfat. B. ex assignatione quam E. de quo præfat. C. illud tenuit in dotem ex assignatione F. de quo eadem C. illud tenuit in dotem ex assignatione quam G. filius & hæres prædict. D. inde fecit præfat.

Writ of Entrie in consimili casu.

præf. F. inde fecit W. Et quod post dimiss. per ipsam C. præf. A. &c.

If the writ be in the *Per*, and if the writ be in the *Post C* then the writ shall be :

Et quod post dimissionem per ipsam C. reverti debet per formam, &c.

And the Aunt and the Neece may joyn in that Writ *D* where the Tenant in Dower doth alien in Fee, and they have the reversion by descent from their Ancestor, and the *E* Process is *Summons, Grand Cape, and Petit Cape, &c.*

Writ of Entrie in consimili casu.

The Writ is not maintainable against Tenants in Tail, after possibility of issue extinct. Old Tenure. 13 E. 2. *Entrie congeable* 56

THERE is another writ of the like nature, which is called *F* a writ of *Entre in consimili casu*; and that writ lieth where Tenant by the Courtesie, or for life, or for anothers life doth alien in Fee, or in tail, or for life, now he in the reversion, who hath an estate therein for life, or in Fee simple, or in tail, shall have that writ during the life of the Tenant for life, who aliened, and that writ is not given by the Statute of Gloucester : which gave the writ of *in Casu proviso*, but it is formed and granted upon the Statute of Westminster 2. cap. 14. Which willeth, that as often as it shall happen in the Chancery, that in one case a writ is found and in the like case falling, wanting the same remedy, now the Clerks of the Chancery shall agree in the making the writ, and that appeareth, H. 3. E. 2.

And if the Tenant by the Courtesie doth alien, he in the *G* Reversion shall have such writ :

Præcipe A. quod, &c. redd. B. unum mesuagium, &c. quod clamat, &c. Et in quod, &c. nisi per C. qui illud ei dimisit, qui illud tenuit per legem Angliæ post mortem E. quondam uxoris sue matris, proavæ, vel avæ præd. B. cujus heres ipse est, Et quod post dimissionem per ipsum C. præf. A. inde fac. in feodo ad præf. B. reverti debet per formam Statuti in consimili casu provisum, ut dicit, Et nisi, &c. Et in quod, &c. nisi per C. cui D. illud dimisit qui illud tenuit per legem Angl. Et in quod, &c. nisi post dimissionem quam C. qui illud tenuit per legem Angliæ, &c. ut supra, cujus, &c. inde fecit F. Et quod post dimissionem &c.

And if the Tenant for life alien, then he in the reversion shall have a writ in this form :

Rex Vic. &c. Præcipe A. quod juste, &c. reddat B. unum mesuagium, &c. in quod idem A. non habet ingressum nisi per C. cui præd. B. illud dimisit ad vitam ipsius C. Et quod post dimissi-

dimission. per ipsum C. præfat. A. inde fac. in feodo. ad præfat. B. reverti debeat per formam Statuti, &c. ut supra.

And note, that by that writ it appeareth, that the Writ doth suppose, that the Tenant for life doth alien in fee; and although he grant but for life, or in tail, yet the writ doth suppose that he alieneth in Fee, &c. But that is not material: for if it be in Fee, or in tail, or for life, it is a forfeiture of his estate.

And so in the case, in the writ in *Casu proviso*, and in the writ of *Entree ad communem Legem*, it supposeth the alienation to be made in Fee, although it be but for life, or in tail, for that there is no other form: and it may be made in the *Per*, *Cui* and *Post*, and that without title made in the Writ, because it is of a Lease made by the Defendant himself to the Tenant who alieneth: but if the Father or other Ancestor lease for life, and dieth, and afterwards the Tenant for life alieneth in Fee, &c. now the Heir who is in the reversion, shall have a writ, which shall comprehend a title in it, and shall be such:

Rex Vic. &c. Præcipe A. &c. quod, &c. redd. B. unum mesuagium, &c. quod clamat, &c. Et in quod, &c. nisi per C. & Duxor. ejus quibus I. pater, vel mater, vel alius antecess præd. B. cujus hæres ipse est, illud dimisit, ad vitam ipsorum C. & D. & quod post dimissionem, &c. [207]

And there the writ doth suppose, that the wife did demise it, &c. and yet she shall have a *Cui in vita* after the death of her husband, to recover the Freehold, notwithstanding the alienation made by her husband. And if Tenant for life grant his estate unto another, and the Grantee alieneth in Fee, &c. then the writ shall be:

In quod idem A. &c. nisi per C. cui D. qui illud tenuit ad vitam suam ex dimissione præd B. illud dimisit ad eundem terminum, & quod post dimiss. &c.

A And if a man lease Lands for term of life, and afterwards dieth, and his heir grants the reversion to B. and the Tenant attorn, and afterwards the Lessee for life granteth his Estate over to one who alieneth to A. in Fee, now B. shall have such writ:

Præcipe A. quod, &c. redd. B. &c. in quod, &c. nisi per C. qui illud ei dimisit, qui illud tenuit ad vitam D. de præf. B. ex assign. quam I. filius & hæres R. qui quidem R. illum præf. D. dimisit eundem terminum, inde fecit præf. B. & quod post dimiss. &c.

If H. lease Lands unto R. for life, and afterwards granteth the reversion to B. in fee, and R. attorn, and afterwards R. alieneth in Fee, B. shall have this writ.

Rex

Writ of Entric in consimili casu.

Rex Vic. &c. Præcipe A. quod, &c. redd. B. in quod, &c. nisi per R. qui illud ei dimisit, qui illud tenuit ad vitam suam de præf. B. ex assign. quam I. qui illud præfat. R. dimisit ad eundem terminum, inde fecit præf. A. & quod post dimiss. &c.

And if Lands be given unto two, and the Heirs of one of them, and he who hath the Fee dieth, and afterwards the Tenant for life alieneth in Fee, the Heir of him in the remainder shall have this writ :

In quo, &c. nisi per C. qui illud ei dimisit qui illud tenuit ad vitam suam ex dimissione, quam H. inde fecerit eidem C. & D. & hered. ipsius D. patris prædict. B. cujus heres ipse est, & quod post dimissionem, &c.

And by that appeareth, That he in the remainder shall have a writ of *in consimili Casu*, if Tenant for life, alien in Fee.

And if an Abbat or Prior Lease Lands for life, and alieneth, and the Prior dieth, the Successors shall have this writ.

Præcipe A. quod, &c. redd. B. unum mesuagium, &c. quod clam. esse jus Eccles. sue S. Thomæ Martyris de K. & in quod &c. nisi per C cui D. illud dimisit, qui illud tenuit ad vitam suam ex dimissione quam S. quondam Prior de K. præced. præd. Prioris inde fecit præf. D. & quod post. dimis. &c.

And if tenant in tail make a lease for life, and the Tenant for life alieneth in Fee, the Tenant in tail shall have a writ *in consimili Casu*. And so it seemeth, if Tenant in tail do lease the land unto another for the life of the Lessee, and dieth, and the Tenant for life alieneth in Fee ; the Heir in tail may choose to have a Formedon, or to sue the writ of *Consimili casu*, living the Tenant for life. For the Tenant in the Action shall not have the Plea to abate the writ, to say, that he hath title to have a Formedon of the Land, &c. But if Tenant in tail lease Lands for the term of his own life, which is not any descent, and afterwards the Tenant for life doth alien in Fee, and the Tenant in tail dieth, his Heirs shall not have a writ of *Consimili casu*, but shall be put to his Formedon in that case. For there he hath not title to have any other action by colour of any demise: but in the case before, he had title by reason of the discontinuance made for life, to claim by reason of the right in reversion descended to him, so that he had right by reason of the reversion in his Father reserved upon the lease, and also by reason of the title of the entail to choose what action he would have, *tamen Quære*.

vide 3 E. 2.
Entre 6.
contra.
For it is
not given by
the Statute
of Gloucester
But West. 2.
cap. 24 see
206. fol.

- E** A Lease was made to one for term of life, the remainder unto another in Fee, and afterwards the Tenant for life did alien in Fee, for which he in the remainder brought a writ *de consimili Casu*, and the writ was abated, *Plaf. 7. E. 3.* But the Court there said, that the cause was, because he in the remainder was not to have the remainder *in facto* until it fell, and that after the death of Tenant for life; and it is not like unto a reversion: but the Law is not taken so at this day, but that he in the remainder hath the remainder vested in him, as he in the reversion hath the reversion: for he shall have an action of waste, and shall enter for the alienation of his Tenant, as well as he in the reversion, and therefore it followeth, that the remainder is in him *in facto*, for which cause I conceive, that Judgment was not rightly given. And *Hil. 18 E. 2.* it was holden by Justice *Herle*, that the writ did lie for him in the remainder, &c. And the heir in tail brought a writ of *Consimili casu* upon an alienation made by Tenant by the Courtesie, and the writ was maintainable. *T. 31 E. 1.*

Writ of *Entrie ad communem Legem.*

G **T**HE writ of *Entrie ad communem Legem* lieth, where Tenant in Dower, or Tenant by the Courtesie, or for life, do alien in fee, or for the life of another, or in tail the Lands which they hold, &c. after their death, he in the reversion, who hath it in Fee or for life, shall have that writ of *Entrie ad communem Legem*, and the writ shall be such, &c.

H *Rex Vic. &c. Præcipimus A. quod iuste, &c. redd. B. &c. quod clamat esse jus & hereditatem suam, & in quod idem A. non habet ingressum, nisi per C. quæ fuit uxor D. quæ illud ei dimisit, quæ illud tenuit in dotem de dono præd. D. quondam viri sui patris vel alter. antecess. prædict. B. cujus, &c. ut dicit &c. & nisi, &c.* (208)

A And that is a writ for the Heir in the reversion, who hath the same by descent, and may be in the *Per, Cui* and *Post.*

B And if a woman recover Dower, and afterwards alieneth in Fee, and dieth: then the writ of *Entrie ad communem Legem* shall mention the recovery, &c. and if Tenant by the courtesie alieneth in Fee, and dieth, the Heir shall have such writ:

Præcipe

Writ of Entrie ad communem Legem.

Præcipe quod, &c. redd. B. &c. quod clamat, &c. in quod idem A. non habet ingressum nisi per. C. qui illud tenuit per legem Angliæ post mortem D. quondam uxoris sue, matris præd. B. cujus hæres ipse est, ut dicit, &c.

And may be brought in the *Per, Cui* and *Post*, as the Case is.

And if Tenant by the Courtesie alien the Fee, and dieth, he in the reversion who is Heir in Fee simple, may sue that writ, or an Assise of Mortdauncestor given by the Statute of Gloucester, cap. 3:

And if Tenant for life alieneth in Fee, and dieth, he in the reversion may have that writ in divers forms. One, if he have the reversion by descent, the writ shall be:

Præcipe A. quod, &c. redd. &c. quod clamat, &c. & in quod idem A. non habet ingressum nisi per C. cui prædict. B. vel C. pater, vel alius antecess. prædict. B. cujus hæres, &c. illud dimisit ad vitam ipsius C. ut dic. &c.

And he may leave out these words in the writ, *Quod clamat esse jus & hereditatem suam, &c.* When the Demandant made the grant to the Tenant for term of life who aliened, &c.

And that writ may be in the *Per, Cui* and *Post*, as the case is. And he may bring a writ of *Ad terminum qui præterit* if he will, if the Tenant for term of life doth alien, and dieth, as it shall please him.

And if Tenant for term of life do grant over his Estate unto another, and he in the reversion granteth the reversion in Fee, and the Tenant doth attorn; and afterwards the second Grantee doth alien in Fee, the Grantee in the reversion shall have such writ.

In quod idem A. non habet, &c. nisi per C. qui illud ei dimisit, qui illud ad vitam suam tenuit de præf. B. ex assignatione quam I. qui illud præf. C. dimisit ad eundem terminum, inde fecit præf. B. ut dicit.

And it may be in the *Per, Cui* or *Post*, as the Case is, and in the writ which is in the *Post*, shall be this clause:

Et quæ post mortem prædict. C. ad præfatum B. reverti debet per formam assignationis præd. ut dicit, & unde queritur, &c. ut dicit, &c.

Writ

Writ of Cessavit.

H **T**HE Writ of *Cessavit* lieth in divers ways. For one writ is where there is Lord and Tenant, and the Tenant will not pay his Rent, nor do his Services, as suit, &c. to his Lord as he ought to do, nor hath sufficient Goods or Chattels upon the Land to be distrained for the Rent or Services behind; but suffereth the Lands to lie fresh, not occupied for two years following together; then the Lord of whom the Lands are holden, may have the writ against the Tenant, and if it be found for him, he shall recover the land, if the Tenant will not find Sureties to pay the Rent then after; and that writ is of such form:

Tenant in Dower shall have a *Cessavit*, and lay the self in her husband: 1. E. 1. *Cessavit* 54. 43 E. 3. 15. 9 H. 7. 16.

have *Cessavit*, but not Lessee for years, for that is a *Præcipe*. 12 R. 2. *Cessavit*: 45. *Cess.* of a Rent 5 H. *Cessavit* of Advowson; 23 E. 3. *Cessavit* 46. 46. 43 E. 3. 15. ac.

Rex Vic. &c. Præcipe A quod, &c. redd B. unum mesuagium, &c. quod idem A. de eo tenet per certa servitia, & quod ad ipsum B. reverti debet per formam Statuti de communi Consilio regni nostri inde provisi, eo quod prædict. A. in faciend. prædict. servitia per biennium jam cessavit, ut dicit, &c.

And that writ is given by the Statute of *West. 2. cap. 21.* and may be brought in the *Per*, *Cui* and *Post*.

The *Per* thus: *In quod idem A. &c. nisi per C. qui illud dimisit, qui illud de præf. B. tenuit per certa servitia, & quod ad ipsum B. &c. (usque ibi) provisi, eo quod præd. A. vel eo quod prædict. C. in faciend. prædict. servitia per biennium jam cessavit.*

48 E. 3. 4. The selfin was alledged in the Feoffor and the Ceaser in the Feoffee, 39 E. 3. Br. *Cess.* 19 ac.

And it ought to be alledged in the writ by whom the Ceaser was.

And in the *Per* and *Cui* thus: *In quod, &c. nisi per C. cui D. illud dimisit, qui illud de præf. B. tenuit, &c.*

And in the *Post* thus: *In quod, &c. nisi post dimissionem quam A. qui illud de præf. B. tenuit per certa servitia inde fecit A. de E. & quod ad ipsum R. reverti debet, eo quod præd. &c. ut dicit, &c. Et unde queritur, &c. nisi, &c.*

Note that if the Feoffee himself cease, the writ shall not be in the *Per* but general.

cont. If the Feoffor cease before the feoffment; so if the Disfesse cease before the disfeisin the Writ shall be in the *Post*, 21 E. 3. 44. Br. *Cess.* 17.

And there is another form of *Cessavit*, without making mention of any Entry; thus:

Præcipe W. de F. & A. uxori ejus quod, &c. reddant Abbati de S. duo mesuagia, qua I. de B. de eo tenuit per certa servitia, &c.

Et que ad ipsum Abbatem, &c. eo quod prædict. W. & A. in faciendo, &c.

And the *Cessavit* lieth for suit of Court ; but the Donor in tail shall not have a *Cessavit* against the Tenant in tail : but if a man maketh a gift in tail, the remainder over in Fee unto another, or unto the right heirs of the Tenant in tail, there, in that case the Lord of whom the lands are holden *immediate*, shall have a *Cessavit* against the Tenant in tail, because that he is Tenant to him, &c.

44 E. 3. 27.

14 H. 6. 15.

19 E. 2.

Cess. 30.

28 E. 3. 95.

ib. 34, & 35.

ac. but there it is said, that if the Tenant cease, and makes a gift in tail, that the Lord may have *Cessavit* in the Fee.

16 E. 4. 1.

& 2.

37 H. 6. 45.

he pleads

that the

Land was

sufficient to

his distress

without

saying overt

and good :

2 H. 4. 5.

35 H. 6.

Cess. 7. ac.

35 H. 6. Cess.

7. ac. but if

a man occupy

at will,

his goods

are sufficient

3 E. 2.

Avow. 206.

Br. App. 20.

3 E. 3. 47.

Cessavit 40.

4 H. 6. 29.

10 H. 7. 24.

45 H. 3. 27.

14 H. 6. 25.

48 E. 3. 4.

And if a man cease to pay his Rent and Services for two years, and inclose the land, so as the Lord cannot distrain, if he break not the gates, or the hedges of the Land which make the inclosure, the Lord shall have a *Cessavit*, although the Tenant hath sufficient Cattel upon the Land to be distrained for the Rent. For the Land ought to be open, and also there ought to be sufficient to distrain for the Rent, &c. But the land is not open to his distress, if there be not sufficient upon the lands to his distress, &c. and so open to his distress, is a good plea, without saying more in such case,

M. 2 H. 4. 5.

And if the cattel of a stranger do escape into the lands, A those cattel are not sufficient or overt to his distress : but if they be the Tenants cattel, it is otherwise.

If three men hold by one entire Rent, as by a Horse, and B the Lord doth recover two parts of the land against two of them, and the third findeth Sureties, &c. the wole Rent is extinct by that recovery. *E. 4. f. 149.*

And a man shall not have one *Cessavit* for lands which C are holden by several Services ; but he ought to sue several writs.

If the Lord do distrain pendant his writ of *Cessavit* against his Tenant, the writ shall abate.

And the Lord shall have a writ of *Cessavit* against Tenant for life, where the remainder is over in Fee to another.

The quantity of the Service is not traversable in a *Cessavit*, but the same shall be taken by protestation.

The seisin of the Services is not traversable in a *Cessavit*, G but in *Cessavit* generally the tenure is traversable.

The Aunt and the Neece shall not joyn in *Cessavit* for a H Cesser made before the title accrued to the Neece : but for a Cesser in both their lives they shall joyn in a *Cessavit*.

And

48 E. 3. 4.

Cessavit before seisin :

33 E. 3.

Wilby Cess.

42.

Writ of Cessavit

465

And a man may have a *Cessavit* against several persons, and several Tenants by several *Præcipes*, &c. but not by one *Præcipe*. 20 E. 3.
Cess. 47.
11 E. 3.
Cess. 50.
13 H. 2. 16. 51
26. E. 3.
Cess. 61.
7 H. 4. 20.

A *Cessavit* doth not lie for him in the reversion against Tenant for life, nor against Tenant in dower, but against Tenant by the curtesie by the Lord Paramount, because he is Tenant to the Lord Paramount, *Tamen Quæ* of that case. But Tenant by the curtesie, Tenant in dower, or Tenant for life shall have a *Cessavit* against the Tenant who ceaseth:

It is a good Plea in a *Cessavit* to say that he did not cease for two years before the Writ brought.

And by the opinion of *Thorpe* and *Hankf*, a man shall not have a *Cessavit* against an Abbat or a Prior of the lands of their foundation: but I know no difference but that the L. shall have a *Cessavit* against an Abbat or a Prior as well as against others; of the Lands which he holdeth of them by Rents or other Services: but for the lands which they hold in *Frankalmoin* a *Cess.* doth not lie for not doing the Service, neither doth a *Cessavit* lie for not doing homage or fealty. 18 Aff. 10.
Br. Cess. 20.

And if a man holdeth lands in several Counties by one Tenure and one Service, if he cease, &c. a *Cessavit* doth not lie. *Quod vi. M. 18 E. 3. t. Assise.*

And there is another Writ of *Cessavit* grounded upon the Statute of *Westm. 2. cap. 41.* That if a man give Land unto a Religious House, or unto another to find a Chaplain to sing Divine Service, or to find certain Tapers to burn before such an Image, or to distribute certain bread and beer every week unto poor men. Now if these Services be not done for two years, nor sufficient distress upon the lands for the time to distrain for those Services, then he or his Heir who gvaæ the lands, shall have a Writ of *Cessavit*, thus:

Rex Vic., &c. *Præcipe* S. Episcopo Wigorn. quod, &c. reddat H. Comiti D. unum mes. &c. in villa de W. quod M. nuper Comes D. frater præd. H. cujus hæres ipse est, dedit W. quondam Episcopo W. & successoribus suis Episcopis loci præd. ad celebrandum annuatim obitum I. fratris & B. matris præd. T. & etiam obitum ejusdem T. & R. de H. post eorum decess. Et quod ad præf. Comitem reverti debet per formam, &c. in quod præd. Episcopus in celebrand. obitum præd. per biennium jam cessavit, ut dicit, T. &c.

Et aliter pro Chantaria: *Præcipe* Abbati de N. quod, &c. redd. B. & C. uxori ejus unum mes. &c. quod R. proavus præd. C. cujus hæres ipse est, dimisit E. quondam Abbati de N. vel eidem Abbati & success. suis Abbati de N. ad inveniend. quendam Canonicum pro animabus antecess. & success. ejusdem R. in Abbacia de N. divina celebrant. Et quod ad præf. B. & C. reverti debet per

M iii

formam

formam Statuti de communi consilio regni nostri super hujusmodi dimiss. provisi, eo quod præd. Abbas in inveniend. præd. Canonium per biennium jam. cess. ut dicit; & nisi, &c.

And the like Writ may be sued against a Parson for Lands given to his Predecessor in Fee, to say Divine Service in such a Chapel from three weeks unto three weeks.

And so a man shall have such Writ for lights, or for drinking for the Poor, or other Almsdeeds, if the said Almsdeeds be withdrawn for two years together.

And where a Religious man, or other spiritual person, bringeth that Writ of *Cessavit*, it shall not be said in the Writ, *Quod clamat esse jus & hereditatem suam, &c.*

And a man shall have a *Cessavit* for not doing of several things which he ought to do thus:

[210] *Præcipe A. &c. quod, &c. reddat B. &c. quod T. quod proavus prædict. B. dedit W. quondam rectori, &c. & success. suis rectorib. &c. ad inveniend. quendam Capellanum divina pro animab. antecess. ejusdem T. in Eccles. &c. celebrantem, & duos cereos arsuos toto tempore, quo Missa illa dicitur. Et qd. ad ipsum B. reverti debet, eo quod prædict. &c. in inveniend. præd. Capellanum, & cereos per biennium jam Cessavit, &c.*

And the like Writs may be made in the *Per*, *Cui* and *Post*.

There is another Writ of *Cessavit* founded upon the Statute of Gloucester. c. 4. where a man giveth certain lands in Fee farm, to find him certain estovers to burn in the Winter, &c. or clothing, or to pay the fourth part of the value of the land yearly, and afterwards he cealeth, and lets the land lie fresh, not manured for two years together; then he or his heir who gave the land, shall have the Writ of *Cessavit* which followeth, viz.

Rex Vic, &c. Præcipe A. quod, &c. reddat B. unum mes. &c. quod idem B. ei dimisit ad feodi firmam, reddendo inde per annum eidem B. tertiam partem vel quartam partem veri valor' mesuag. prædict. & quod ad ipsum reverti debet per formam Statuti de communi consilio regni nostri inde provisi, eo quod. præd. A. in solutione prædict. firm. per biennium jam. Cess. ut dicit, & nisi, &c.

And in the *Per* thus: *Et in qd. idem A. non habet ingress. nisi per E. patrem præd. B. cujus heres ipse est, qui illud ei dimisit ad feodi firmam Vel sic in the Per & Cui: Nisi per D. cui præd. B. vel C. pat. præd. cujus heres ipse est, illud dimisit ad feodi firmam.*

And

And in the *Post* thus: *Nisi post dimiss. qui præd. B. vel C. pat. prædict. B. cujus hæres ipse est, inde fecit D. ad feodi firmam, &c. cessat dicit, & unde queritur, &c. & nisi, &c.*

B And if a woman give lands in Fee-farm, rendering to her the moiety, or the third part of the value, and afterwards taketh Husband, and the Tenant ceaseth for two years, and suffereth the land to lie fresh, and doth not pay the Rent, the husband or wife shall have a Writ of *Cessavit*, and the Writ shall suppose *Quod ad prædict. A. & B. (his wife) reverti debet*, and not to the wife only.

And note that these gifts in Fee-farm, to render the third part, or the fourth part, or to find a Chaplain to say divine Service, or to find him clothing or estovers, or to distribute, &c. upon which a Writ of *Cessavit* lieth, it behoveth that this were made before the Statute of *Quia emptores terrarum*, &c. upon which Feoffments a Tenure is reserved and implied in the gift. But if a man at this day after the Statute of *Quia emptores*, will give lands in Fee-farm to render the third or the fourth part of the value of the land, or to find a Chaplain, &c. if the Tenant ceaseth, &c. the Donor nor his heir shall not have a writ of *Cess.* because there is not any tenure betwixt them. *Quod vide M. 45 E. 3. t. Cess.*

But if a man giveth lands in tail at this day to find a Chaplain, or to render a third part to the yearly value, or to find estovers yearly, if the Tenant ceaseth of these Services, it is a doubt whether the Donor shall have a *Cessavit* to recover the Lands.

And it seemeth that the Donor shall have a *Cessavit*: for a writ of *Cessavit* is given by the Statute of *West. 2. cap. 41.* for lands given to find a Chaplain, or to find Tapers, or distribute alms to poor men. But then it seemeth that the same is intended of gifts in Fee-simple, because that the Statute of *Westm. 2. cap. 41.* saith:

That an Action shall lie for the Donor or his Heir to demand the Lands so given in demesne, as it is appointed in the Statute of Gloucester of tenements demised to do, or render the fourth part of the value, or more, and upon which feoffments a tenure was reserved and implied, because the Statute of Quia Emptores, &c. was made after the Statute of Westm. 2.

And also before the Statute of *Quia emptores terrarum*. If a man make a Feoffment in Fee, and doth not say of whom the Feoffee shall hold, &c. then the Feoffee ought to hold of the Feoffor and his heirs. By which it appeareth, that if a man at the time of the making of the Statute of *W. 2.* give lands to hold in Fee-farm, rendering the value, or the third

Writ of Contra formam Collationis.

part, &c. that he held of the Feoffor and his heirs, although that no tenure was expressed therein. And the Statute of Gloucester was made Anno 6 E. 1. and the Statute of Westminster. 2. made Anno 30 E. 1. and the Statute of Quia emptores terrarum, was made Anno 18 E. 1. And therefore if a man maketh a Feoffment in fee at this day, to find Tapers burning, or to render the third part of the value, or the like Services, he shall have an Action of Covenant upon that Feoffment, if it be made by Deed indented, and no other remedy for the same, as I conceive.

And if land be given before the time of memory to find a Chaplain to sing in his Chapel within his Manor every week. Now by the Statute no man shall have a Cess for the Cessor of such service, but the Donor or his Heir: but upon that special matter, he shall have a special Writ for him who is seised of the Manor time out of mind, against him who ought to do Service. T. Anno 7 H. 2.

And a Cessavit doth not lie against an Abbat or Prior for a Cessor of Services of Lands which they hold in Frankalmoigne, because no Service certain is expressed in the Gift. Also it appeareth before the Statute, that the Lord could not have a Cessavit against the Tenant, but that he may seise the Lands for the Arrearages of the Rent or Services by Judgment of the Court, if it were found that they were behind, Quod vi. P. 20 H. 3. But at this day he cannot do so, but bring a Cessavit.

Writ of Contra formam Collationis.

Vide 2 & 3
Ms. Dyer
109.

Yet it seems
by Br. Ali-
nation 15.
that Bishop,
Dean, and

THE Writ of *Contra formam Collationis* lieth, where a man giveth Lands or Tenements to an Abbey, or other House of Religion before the Statute of *Quia emptores terrarum*, to hold of him in *Frankalmoigne*, and afterwards the Abbat or the Covent do alien the same Land unto another Fee. Chapter, and other who are not Religious, are not within this Statute. 40 E. 3. 27. The Writ doth not lie but where the Land is given in *Frankalm.*

The Donor or his heir may sue that Writ of *Contra formam Collationis*, and that Writ always ought to be sued against the Abbat who aliened or his Successor, and not against the Tenant of the Land. But when he hath recovered the Land against the Abbat or his Successor, then he ought to sue

sue forth a *Scire fac'* against the Tenant of the Freehold of the land, and the Tenant may plead in bar matter, which may prove that the Demandant hath no title, or that he hath released his title. And if he who recovereth by the *Contra formam Collationis* doth enter upon him who is Tenant of the Freehold of the Land, then it seemeth the Tenant shall have an an Affise against him.

C And that Writ of *Cont' formam Collationis*, lieth only for him or his heirs who gave the land in *Frankalmoine*, and not by any stranger. But if he who ought to have the action dieth, and doth not bring any action for the same, yet his heir may bring the action for to recover the land. For the alienation doth give right and title to him who gave the Lands, or unto his heirs for to recover the Lands, and to have the lands again for that alienation. And it lieth against the Successor upon an alienation made by his Predecessor. And yet such Writ brought against the Successor, upon the alienation made by the Predecessor was abated. *H. 17 E. 3.*

D But yet notwithstanding it seemeth the Writ well lieth, because that the right is given to him who gave the lands, and unto his heirs to have the lands again by the Statute, and that right cannot die. For the heir shall have the action upon the alienation made in the life of the father, because the right of the action doth descend, and by the same reason the heir of the Donor shall have the action against the Successor upon alienation made by the Predecessor, because the right doth accrue to the Donor or his heir by alienation, for which cause it is reason that he have the action against the Successor to recover that right, and to prove the same; the form of the Writ in the Register is such:

Rex Vic', &c. Præcipe Abbat. de N. &c. quod, &c. reddat B. unum mesuag', &c. quod eidem domui collatum fuit in liberam elemosynam per præd. B. vel per H. patrem præd. B. cujus hæres ipse est, & quod per alienationem per ipsum Abbatem, vel per R. quondam Abbatem de N. prædecess prædict. Abbatis contra formam collationis præd. inde facta in feudum ad præfat. R. reverti debet, ut dicit, &c. nisi, &c.

And that Writ of *Contra formam Collationis* doth not lie, although the Abbat alien in Fee, &c. but where the Abbat, and Covent in Fee, &c.

E And if a man do recover in value lands against an Abbat, who entreth in the Warranty and loseth, &c. the Founder shall have a *Contra formam Collationis* upon the same, as it appeareth in the book, *M. 45 E. 3. 18.*

Contra formam Coll., 12 H. 4. 17. Hank-ford cont. to Fitz herb,

21 H. 4. 68. Hank-ford.

Old Ass. 14. It lieth of Rent.

28 E. 3.
*Contra formam
 collationis.* 6.

If an Abbat and covent alien an advowson in Fee, at the next avoidance the Founder or his heir may present unto the advowson, because they cannot sue a *Contra formam collationis*.

And if an Abbat and Covent alien the lands which are given by the King in *Frankalmoigne*, some say that the King may enter: but it seemeth that he ought for to sue forth a *Scire facias* upon an Office found of the said alienation: See the Case, *M. 45 E. 3. 18.*

And that Writ of *Contra formam collationis* is given by the Statute of *Westm. 2. cap. 41.* and the Process is *Summons, Grand Cape* and *Petit Cape*.

43 H. 6. 6.
coniv.

40 E 3. 27.

And a Writ of *Contra formam collationis* lieth as well for land which was not given for the foundation of the Monastery, if it were given in *Frankalmoigne*, as for lands of the foundation: but it ought for to be given in *Frankalmoigne* before the Statute of *Quia Emptores, &c.* For a man could not give lands after the Statute of *Quia Emptores, &c.* unto an Abbat or Prior to hold in *Frankalmoigne*, because he ought to hold of the Lord *Paramount*, of whom the Tenant held before. But the King at this day may give lands in *Frankalmoigne* to an Abbat or Prior, for that he is not bound by the Statute. And also the King may license his Tenant to give lands unto an Abbat or Prior in *Frankalmoigne* in Fee-simple, to hold in *Frankalmoigne*: for he may dispense with the Statute, and grant such authority to his Tenant if he will. But it seemeth another Lord cannot grant such licence to his Tenant, by reason of the Interests of the Lord *Paramount*: but the King and all the Mesne Lords together may get Licences unto the Tenants *Paravaile*, who have the Fee of the Lands, that they may alien the same to an Abbat or Prior to hold of him in *Frankalmoigne*, or to grant the same unto a lay person, to hold of him by certain Services, because that the Statute of *Quia Emptores, &c.* was made only for the advantage of the Lords, and therefore they all may dispense with the Statute, which see *2. contra formam collationis, Lib. d' Ent. 119.* And there it appeareth, that the heir shall have the action against the Successor of the Abbat, who aliened in the time of his Ancestor.

Writ of Formedon in the Descender.

L **T**HE Writ of Formedon in the Descender is grounded upon the Statute of *Westm. 2. cap. 1.* and lieth where a man giveth Lands to one, and the heirs of his body begotten : Or unto a man or a woman, and to the heirs of their bodies begotten : Or unto a man and a woman who is his cousin in Frank-marriage, by force of which Gift they are seised, and afterwards he alieneth those Lands, or is disseised of them, and dieth, his heir shall have that Writ of Formedon in the Descender to recover the Lands given in tail. (212)

And so upon every Gift in tail of Lands or Tenements, if the Ancestor doth alien the Lands or Tenements, or be disseised or deforced thereof, and dieth, he who is heir unto the Lands by force of the Gift, shall have that Writ of *Formedon in the Descender*, against him who is Tenant of the Lands or Tenements, or Pernor of the profits of the same Lands or Tenements. But that Writ against the Pernors of the profits is given by the Statute of *Anno 1 H. 7. cap. 1.*

A And in special Case, a man may have a *Formed' in the Descender* of the profit apprend' in any Lands or Tenements, or issuing out of any Lands or Tenements : As if a man grant 20 s. or 20 l. issuing out of any Land of Tenement, unto a man, and the heirs of his body begotten ; or unto a man in Frank-marriage with his daughter. Now if the Donee alien that Rent, or is disseised of the Rent, and dieth, his heir who is his son or daughter, shall have the Writ of *Formedon in the Descender* of that Rent.

B And so if a man grants the moiety of the profits arising out of his Mill unto another man, and the heirs of his body, and the Donee dieth, and his heir is deforced of the profits, the heir shall have a *Formedon in the Descender* for those profits, and the form of the Writ is such :

Rex Vic', &c. Præcipe W. Magistro Hospitalis S. T. Martyris de S. quod, &c. reddat I. C. medietatem exituum provenientium de duobus molend. ipsius Magistri in M. quam B. quondam Magister Hospitalis, &c. dedit W. de C. & heredibus de corpore suo exeunt. & quæ post mortem, &c.

And so it seemeth, That if a man granteth to one and the heirs of his body, pasture for twenty Oxen, or for an hundred Sheep, &c. and the Donee die, and his son, who is his heir, is deforced thereof, then he shall have a *Formedon in the Descender*, and the Writ shall be :

Rex Vic', &c. Præcipe, &c. quod reddat A. B. pastur. ad viginti boves, vel ad centum oves in centum acris terræ in M. quam, &c.

But if a man granteth Common of Pasture to one and the Heir of his body begotten, which hath Cattel, and the Donee dieth, and the heir is desforced of the Common, the heir shall not have a Formedon in the Descender of the Common; but a *Quod permittat*, in the nature of a Formedon, and shall count upon the Gift and the special matter. But the Writ of Formedon is an action Auncestrel. For if he who is seised by force of the tail be disseised of the Land, he shall have an Assise of *Novel Disseisin*, or an action of Trespass at his pleasure, and not a Formedon. And what manner of Gift shall be said a Gift in tail, and what not, appeareth by Mr. Littleton in his Chapter of *Estate tail*, and therefore it is not necessary to express the same here. But the Forms of the Writs of Formedon are many, as appeareth by the Register, thus :

Vi. 2. Eliz.
Dyer 216.

Rex Vic', &c. Præcipe A. quod, &c. reddat B. manerium de N. cum pertin. quod C. dedit D. & E. uxori ejus, & hæred. de corporibus ipsorum D. & E. exeuntibus, & quod post mortem præd. D. & E. præfat. B. filio & hæredi prædict. D. & E. descendere debet per formam donationis prædict. ut dicit, & nisi, &c.

32 H. 6. 36.

And if the Gift be made in Frank-marriage, then the form of the Writ is such : *Quod C. dedit B. in liber. maritag. cum fil ejusdem C. & quod post mort. prædict. D. & E. præf. B. fil. & hæred. præd. D. & E. descend. debet, &c.*

1 H. 4. 19.

And in his Writ of Formedon he ought for to make mention of every man who was seised by force of the tail, and to name him Son and Heir in his Writ, in the manner. *Et quod post mortem prædict. D. & E. & F. filii & hæredis eorundem D. & E. præf. B. filio & hæredi ejusdem F. descendere debet, &c.*

But if any of the Heirs in tail were not seised by force of the tail, but overlive their father, and die before that they enter into the Land, or have any seisin thereof : then they need not for to name them Heirs in the Writ, but only in this manner :

Et quod post mortem prædict. D. & E. filii ejusdem D. & F. filii prædict. E. præfat. B. filio prædict. F. & consanguineo & hæredi præd. descendere debet, &c.

And so he ought always to make the Demandant Cousin and heir, or Son and Heir to him who was last seised of the tail, as the Case is : and the surest way for the Demandant is, to make every man who is named in the Writ, Son and Heir

Heir in the writ, although they were not seised of the lands by force of the tail, for it is not material whether they were seised or not, although he name them Heir in the writ, *quod vi. Anno 8. and 11 H. 6.*

And if Tenant in tail hath issue two Sons, and dieth, and a stranger abateth, and entreth into the Land, and afterwards the eldest Son dieth before he entreth into the land, the youngest Son shall have a writ of Formedon in the Descender, and needeth not name his eldest brother heir to his father in the writ, but only Son, because he never had seisin of the land, but only held the Estate: but if the eldest brother had entred, and was seised by force thereof, and died without heir of his body, then the youngest Son who is his brother and heir, ought to mention the eldest in the writ and to name him Son and Heir to his father, and to make himself brother and heir unto him.

A And if the heir in tail be seised by force of the tail or not, and after enter into Religion, and be possessed, then his heir shall have the writ of Formedon in the Descender in such form:

Et quod post mortem præd. D. & postquam E. filius & hæres præd. D. habitum religionis assumpsit, in quo habitu professus fuit, ut dicit, præf. B. filio & hæredi ejusdem E. descendere debet, &c.

But if the father maketh a feoffment in fee, or leaseth the land for life, and entreth into religion, and is professed: yet his heir shall not have a Formedon in the Descender, *quia habitum religionis assumpsit, &c.* during the father's life, because the father may lawfully give his lands during his life: and after the death of the father, he may bring his common Writ of Formedon, if he will, or that special writ, *quia habitum religionis assumpsit* at his election, as it seemeth.

B And if Tenant in tail goeth upon pilgrimage, and dieth in his journey, his heir shall have a Formedon against a stranger who entreth and abateth: and the form of the writ shall be:

Et quod post mortem præd. D. & postquam E. fil. & hæ. præd. D. iter peregrinationis arripuit versus S. Jacobum, in quo itinere obiit, ut dicit, præf. B. fil. & hæ. &c.

C And if Tenant in tail hath issue two daughters, and one of them hath issue a Son and dieth, and afterwards the Tenant in tail dieth, and a stranger abateth; now the daughter and the Son of the other daughter shall have a Forme in this form:

Quod reddat B. & C. unum mesuagium quod D. &c. & qd post mortem præd. E. & F. unius filiarum ejusdem E. præf. B. alter filiarum

Writ of Formedon in the Descender.

filiarum prædict. E. & B. filio prædict. E. & consanguin. & hered. prædict. E. descendere debet, &c.

And if Tenant in tail hath issue two Sons, and dieth, and D the eldest Son entreth, and hath issue and dieth, and his issue entreth and dieth without issue of his body, then the youngest Son the Tenant in tail shall have such writ of Formedon, if he be deforced of the land.

Et quod post mortem prædict. D. & E. fil. & her. ejusdem D. & F. fil. & her. ejusdem E præfat. B. fil. præd. D. & consanguineo & heredi prædict. F. descendere debet.

And if a man give lands in tail unto a woman and the E heirs males of her body, and of R. her late husband begotten; if the woman die, and a stranger doth abate, her heir male begotten by R. her husband, shall have a Formed. in this manner.

Quod C. dedit D. quæ fuit uxor R. & heredibus masculis de corpore ipsius D. & præfat. R. quondam viri sui exuentibus, & quod post mortem præd. D. præf. W. fil. & hered. ejusdem D. de corpore suo & corpore præd. R. procreat. descendere debet, &c.

And if a man give lands to R. and unto the heirs which F the said R. shall beget on his first wife, then the form of the Writ of Formedon is such :

Quod W. dedit R. & hered. quos idem R. de prima uxore sua procrearet ; & quod post mortem prædict. R. & A. fil. G. quam primo duxit in uxorem præf. I. filio & heredi ejusdem R. de præf. A. prima uxore sua procreato descendere debet, &c.

And if a man give lands unto a woman and unto the heirs G which he himself shall beget on the body of the said woman, and after they have issue between them two daughters, and one of them hath issue a daughter and dieth, and after the Donor and the Donee dieth, the Aunt and the Neece shall joyn in a Formedon for that land, if they be deforced thereof, and the Writ shall be such :

Quod R. dedit M. & hered. quos idem R. de corpor. ipsius M. procrearet, & quod post mortem prædict. M. & A. unius filiarum ejusd. M. de corpore suo per præf. R. procreat. & præf. I. alteri filiar. ejusd. M. de corpore suo per præf. R. procreat. & I. de S. filio præd. & consanguineo & heredi ejusd. M. descendere debet, &c.

And if lands be given to a man and his wife, and to the H heirs of their two bodies, and they have issue a Son and die, and the son is seised, and hath issue three daughters, which have issue and die in the life of their father, and after one of the daughters have issue and claimeth in the life of the grandfather, and afterwards the father and the three daughters die, the Coparceners of the three daughters shall have a Formedon in such form.

Et quod post mortem præd. E. & F. & W. fil. & hæred. earund. E. & F. & A. M. & K. filiarum præd. W. & Saræ fil. præd. M. præfat. A. filia prædict. A. & Johan. fil. prædict. K. & W. alter. filio præd. S. consanguineis & hæred. præd. Wilhelmi descendere debet, &c.

And if lands be given to R. and I. and to the heirs of the body of R. begotten, and R. hath issue four daughters, and he and one of his daughters enter into Religion, and are professed, and I. dieth, and afterwards one of the daughters of R. dieth before they have any possession of the lands, and the other two daughters do survive, and are deforced of the land, they shall have a Formedon in such form :

Quod T. dedit R. & I. & hæred. de corpore ipsius R. exeunt & quod post mortem prædict. I. & postquam prædict. R. & Gracia una filiarum prædict. R. habitum religionis assumpser. & in quo habitu professi sunt, ut dicitur ; Ac etiam post mortem E. alterius filiarum prædict. R. præfat. M. & A. aliis duabus filiabus ejusdem R. post mortem E. alterius filiarum præd. R. præf. M. & A. descendere debet, &c.

And if the reversion of Tenant in Dower be granted to a man in tail, and after the death of Tenant in Dower he is seised of the land by force of the gift, and hath issue and dieth, and the issue entreth and hath a daughter and dieth, and afterwards a stranger entreth and abateth in the Land, the heir of the issue in tail shall have a Formedon in this form :

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Quod I. de H. tenet in dotem de hæred. I. de S. & quod idem I. concessit W. de S. & hæred. de corpore suo exeuntibus post mortem præd. I. habond. & quod post mortem prædict. I. & W. & R. filii & hæred. ejusdem W. præfat. Isabellæ filie & hæred. pd. W. descendere debet.

And if a man lease lands for life, and afterwards grants the reversion in tail, and then Tenant for life dieth : Now if a stranger abate in the Land, the grantee in the reversion shall have such writ :

Quod I. dedit P. ad vitam suam, & quod eadem I. postmodum concessit præfat. F. & hæred. de corpore suo exeunt. post mortem ipsius P. habend. & quod post mortem prædict. P. præf. F. remanere debet per formam donationis & concess. præd.

And if a man lease lands for term of life, and afterwards grants the reversion in tail, by fine unto a man and his wife, and unto the heirs which he shall beget on the body of his wife, and afterwards the Tenant for life dieth, and the husband and wife enter and are seised by force of the tail, and die, and a stranger abateth and entreth into the land ; the heir shall have a Formedon thus :

Quod

Another Writ of Formedon in the Descender.

Quod A. dedit B. ad vitam ipsius B. & quod idem A. per finem inde in Curia Domini E. quondam Regis Angliæ avi nostri, coram C. & sociis suis tunc Justic. &c. per breve suum levat. concessit D. & E. uxori ejus habend. post mortem ejusdem B. eisdem D. & E. & hered. quos idem D. de corpore ipsius E. procrearet, & quod post mortem prædict. B. D. & E. præfat. F. filio & hered. præd. D. & E. de corpore ipsius E. per præf. D. procreato, descendere debet per formam donationis, & finis prædict. ut dicit, &c.

Another Writ of Formedon in the Descender.

THere is another writ of Formedon in the Descender, B which is called a writ of Formedon of Land, which he holdeth in Coparcenery, and that writ lieth properly, where Tenant in Tail dieth seised, and hath issue many daughters, and they enter, and make a division and partition of the land betwixt them, and one of the Coparceners after the partition doth alien her part and dieth, her heir shall have that manner of writ of Formedon, and that writ lieth for lands given in frankmarriage, as well as for other Lands given in tail.

And if Lands in Gavelkind be entailed and descend to many brethen, as heirs to their father, and they make Partition betwixt them of the lands, and afterwards one alieneth his part and dieth, his heir shall have a Formedon of that which they held in parts, and the form of the writ is such :

Rex, &c. Præcipe A. quod, &c. reddat B. quatuor viginti acr. terr. cum pertin. in D. quas una cum aliis quatuor viginti acr. terr. cum pertin. in eadem vill. L. dedit T. in liber. maritag. cum I filia prædicta L. & quam post mortem prædict. T. I. & M. fil. & unius hered. eorundem T. & I. quæ illas tenuit in purpartem suam, ipsam de prædict. cent. & sexaginta acris terræ per partitionem inter ipsam M. & R. sororem ejusdem M. filiam & alter hered. prædict. T. & I. inde fact. contingent. præfat. filio & hered. prædict. M. descendere debet, &c.

And if two Coparceners be Tenants in tail by descent **C** from their father or mother, and afterwards they make partition, and one Coparcener hath issue and dieth, and the other Coparcener dieth without issue, the heir of that Coparcener who hath issue shall have a Formedon in this form :

Et quod post mortem prædict. T. & I. & K. filia & unius hered. eorundem T. & I. quæ illas tenuit in purpartem suam, ipsam de prædict. centum & sexaginta acr. terr. per partem inter ipsam K.

Another Writ of Formedon in the Descender. 477

& M. soror. ejusdem K. fil. & alteram hered. præd. T. & I. inde fact. contingent. & præf. M. præf. G. filio præd. M. & consanguineo & hered. præd. K. descendere debet, &c.

And it appeareth by the Register that a man shall have a Writ of Formedon of land which he held in partition by the name of the moiety in special case, as where two Coparceners are daughters of Tenant in tail, and they make partition betwixt them of the land, and afterwards one sister dieth without issue, and the other sister alieneth the land, and hath issue and dieth, the issue of the Coparcener who had issue, shall have a Formedon of all the land in tail in this form :

Rex Vic. &c. Præcipe F. quod &c. reddat H. 10. Mesuag. 20. acr. terr. cum pertinentiis, &c. quæ I. dedit A. & hered. de corpore suo exeuntibus, & quam post mortem præd. A. & M. fil. & unius hered. ejusdem A. quæ medietat. præd. mesuag. & terr. tenuit in purpartem suam, & B. fil. & alterius hered. prædict. A. quam alteram medietatem eorundem Mesuagior. & terr. tenuit in purpartem suam, per partition. inde inter ipsas factam, quæ quidem B. dict. medietatem præf. M. contingent. post mortem ejusdem M. ut soror & heres ejusdem M. tenuit, præf. H. filio & heredi præd. B. descendere debet. And the writ is good, be cause by the death of one sister without issue, the partition is made void, and the other shall have the whole land as heir in tail.

D And if a man give lands in tail unto I. his daughter, and to the heirs of her body, and I. hath issue two daughters and dieth, and they enter and make partition between them, and afterwards one of the daughters hath issue two daughters, and one of the two daughters hath issue four daughters, and die, and afterward the Aunt who was one of the daughters of the Donee dieth without issue, &c. and a stranger abareth, the four daughters, and the issue of the other sister shall have a Formedon in such form :

Quod reddat tria Mesuagia, centum acr. terræ, & viginti acr. prati, & cent. solid. redditus, cum pertin. in N. quæ una cum Manerio de B. cum pertinentiis, A. dedit I. filio suo & hereditibus de corpore ipsius I. exeunt. & quæ post mortem prædict. I. & C. fil. & unius hered. ejusdem I. quæ illam tenuit in purpartem suam, ipsam post mortem præd. I. de præd. Maner. Mesuag. terra, prato, & redditu per partition. inter ipsam C. D. filiam & alteram heredem ejusdem I. inde fact. contingent. & præd. D. & A. & E. fil. præd. D. præf. Margaret, Margery, Katherine, & Constantine, filii præd. A. & T. filii præd. E. & consanguineo & heredi præd. C. descendere debet, &c.

And

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478 *Another Writ of Formedon in the Descender.*

And if the moiety of any land be given to the husband A and wife, and unto the heirs of their two bodies begotten, and they have issue four daughters, and die, and the sisters enter and make partition betwixt them, and afterwards the two sisters die without issue, and the third sister alieneth, and dieth without issue ; the four sisters shall have a Formedon in this form :

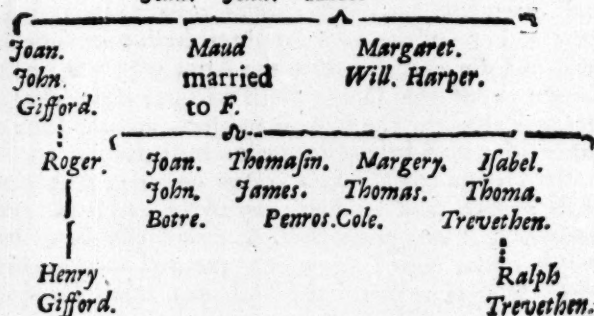
Et que post mortem prædictor. Rogeri & Agnetis, & Alic. B fil. junioris, & unius hæredis, eorundem Rogeri & Agnet. que idem in Alicia jun. dictam quartam partem tenuit in purpartem suam, ipsam de prædict. medietat per partitionem inter ipsum & Isabel & Aliciam seniore, & præf. Matildam filias & tres alteras hæred. prædict. Rogeri & Agnetis uxoris ejus inde factam contingent. & prædict. Isabellæ fil. Rogeri & Aliciæ senioris præf. Matildæ sorori & hæredi ejusdem Aliciæ junior descendere debent, &c.

And to make a full declaration of the Case of Formedon in the Descender, upon which the writ is founded, it is necessary to have the Pedigree made in the writ, which you shall see here following.

Henry Russel.
Elizabeth his Wife.

Henry Russel.

John. John. Alice.



Henry Russel gave land to Henry Russel and to Elizabeth his wife, to Henry their Son, and to the heirs of the said Henry the Son of his body, lawfully begotten, and died, and after Henry Russel the father and mother died, and Henry Russel the

the Son was seised by force of the tail, and had issue Joan, John and Alice, and Alice had issue Joan, Maud and Margaret, and Joan was married to John Gifford, and had issue Roger Gifford, who had issue Henry Gifford, and Maud was married to F. and had issue, Joan married to John Botreux Thomasin married to James Penros, Margaret married to Thomas Cole, and Isabel married to Trevethen, and Isabel had issue Ralph Trevethen, and Margaret was married to William Harper; and Henry Russel the Son died, and John his Brother entred and was seised by force of the tail and died, and a stranger abated, and all the heirs in tail are dead, but Margaret Harper the wife of William Harper, Henry Gifford, Thomasin married to James Penros, Joan Botreux married to Job. Botreux, and Margery Cole married to Thomas Cole, Joan Margaret and Ralph Son of the said Isabel; now these Coparceners shall joyn in the Formedon, and the writ shall be such:

Rex Vic. &c. Præcipe Reginaldo Rees quod, &c. reddat Will. Harper & Margaret. uxori ejus, Henrico Gifford Jacobo Penros & Thom. uxor. ejus, Jobanni Botreux & Johann. uxor. ejus, Thom. Cole & Marger. uxori ejus, & Radulpho Trevethen, manerium de R. cum pertin. quod Henr. Russel dedit Henrico de Russel & E. uxori ejus, & Henrico filio eorundem Henr. de Russel, & hæred. de corpore ipsius Henr. filii Henr. exeunt. & quod post mortem prædict. Henr. de Russel, & E. & Henr. filii Henr. & Johan. filii & hæred. ejusdem Henr. filii Henr. & Johan. fratris & hæred. ejusdem Johan. filii Henr. & Alic. sororis ejusdem Johan. fratris Johannis & Johannæ unius, & Matildæ alterius fil. ejusdem Aliciæ, & Rogeri filii prædict. Johannæ fil. Aliciæ, & Johannæ unius filiarum prædict. Matild. præfat. Margaret. uxor. Wilhelmi tertiæ filiarum prædict. Aliciæ, Henrico Gifford fil. prædict. Rogeri & Thomasinæ, Johan. uxori Johan. Margeriæ uxori Thom. cæteris filiabus prædict. Matild. & Radulpho filio prædict. Isabellæ fil. Matild. & consanguineo & hæred. prædict. Johannis fratris Johannis descendere debet, &c.

[216]

Another

*Another Writ of Formedon in the Descender,
called Insimul tenuit.*

T Here is another manner of Writ of *Formedon* in the Descender, which is called *Formedon qui insimul tenuit*; and that writ lieth by one Coparcener, or by one heir in Gavelkind of lands entailed, where they hold the lands entailed in Coparcenery without any partition made between them of the same, and afterwards one Coparcener doth alien her part unto a stranger in fee, and dieth without issue, or hath issue and dieth; or if he dieth seised, and hath issue; and a stranger doth oust the issue, or the other Coparcener doth put out the issue, the issue, or he who is heir to the Tail of those Lands, shall have that writ of *Formedon* against the stranger, or the other Coparcener, who deforced her of the Land.

Rex Vic. &c. Præcipe Abbati Westmon. &c. quod reddat B. & I. uxori ejus duas partes triginta solidat. redditus, mille alborum panum pretii 20. solid. & quinque lagenarum cervic. pretii decem denariorum cum pertin. in B. quas una cum tertia parte earundem solidat. redditus, panis & cervic. cum pertin. in eadem villa, A. dedit G. & B. uxori ejus, & hered. de corporibus ipsorum G. & B. exeuntibus, & que post mortem præd. G. & B. & R. filii & hered. eorundem G. & B. & T. filie & hered. ejusdem R. & W. filii & hered. ejusdem T. & M. filii & unius hered. ejusdem W. qui illas duas partes, & dict. partem cum K. filia & altera heredum prædict. W. insimul tenuit, & D. fil. & hered. ejusdem M. & prædict. K. amit. prædict. C. & F. fil. ejusdem K. præfat. I. fil. prædict. F. & consanguineæ & hered. prædict. D. descendere debent per formam donat. præd. &c.

And by that writ it seems; That *I.* is seised of the third part of those Rents; and bringeth this writ of two parts of that Rent.

And there is another writ of *Formedon* and *Insimul tenuit*, where he shall make his demand by the name of the moiety and that is where one Coparcener is deforced of her part and the other Coparcener is in possession of her part, and the writ is such:

Præcipe Abbati Westmon. quod, &c. redd. B. & I. uxori ejus medietat. triginta solidat. redditus, & reddit. mille albor. panum, pretii decem solid. & quinque lagenarum cervicia, pretii decem denariorum, &c. cum pertin. in villa Westm. quam una cum alia medietate eorundem triginta solidat. redditus, &c.

redditus panis & cervisie cum pertin. in eadem villa, A dedit G. & B. uxori ejus, & hered. de coeporibus eorundem G. &c. exeuntibus, & quam post mortem præd. G. & B. & F. filii & hered. eorundem G. & B. & T. fil. & hered. ejusdem F. & W. filii & hered. ejusdem T. & R. filii & unius hered. ejusdem W. quam illam & præd. aliam medietat. cum M. filia & altera hered. præd. W. insimul tenuit & E. filii ejusdem R. præfat. I. fil. prædict. E. & consanguineo & hered. prædict. R. descendere debet, &c.

C And it appeareth by that Writ, that one Coparcener shall have the writ of *Formedon* in the *Insimul tenuit* against a stranger upon the possession of his Ancestor, without naming the other Coparcener who hath her part in possession.

And if a man do bring a *Formedon* in the Descender upon the seisin of his brother, and as heir to his brother; he shall not mention in the Writ, that his brother is dead without issue: but if a man bring a *Formedon* in the Descender as cousin and heir to him, he ought to mention in the writ how he is cousin and heir to him, and he ought to make himself heir unto him who was last seised, and that by the same Writ.

D And a man shall have a *Formedon* in the Descender upon a gift in tail made before the Statute of *Donis*, if the alienation be made after the Statute, and not before.

E And if Lands in tail descend to two Coparceners, and one entreth into the whole, and the other hath issue and dieth, and she which entreth into the whole dieth without issue, the issue of the other Coparcener shall have several Writs of *Formedon*, one of the seisin of the Grandfather, and in that Writ he shall not say *Insimul tenuit*, &c. because her mother was never seised but of the other moiety of the land of the seisin of her Aunt, the Writ shall say, *Qui insimul tenuit* with her mother, for that seisin was a seisin to her mother, if she would, &c. And if one Coparcener after the death of the Ancestor enter into the whole, and alieneth in fee, and dieth without issue, the other Coparcener shall demand the moiety as Heir unto her Father, and the other moiety as heir unto her Sister.

A And if the heirs in tail of Gavel-kind bring a *Formedon* in the Descender, the Writ shall be of common form, as the Writ of *Formedon* brought by sisters, and in the Count he shall shew the custome.

B A *Formedon* shall be brought of Gorf. but not of an Advowson.

And if Tenant in tail be indebted to the King in the Exchequer

Writ of Insimul tenuit.

chequer, and dieth; and his heir entreth into the Lands, and is distrained in the entail Lands for the King's Debt; Now if the Fathers Executors have Assets, or Goods, or if the Father hath Lands in Fee-simple in the hands of others, which he hath aliened; the heir in tail shall have a special Writ unto the Treasurer and Barons of the Exchequer, rehearsing the whole matter; commanding them that they do enquire thereof; and, if it be true, that they do surcease to charge him upon the entailed Lands, and the Writ is such:

*Rex Theſaurario & Baron. ſuis de Scaccario ſalutem. Monſtra-
vit nobis R. filius I. de W. quod licet ipſe non tenet terras ſeu
tenement. quæ fuer. prædict. I. prout 12 meſuag. & 2 carucat.
terr. in I. cum pertin. quod præd. I. & C. uxor. ejus. mat. præd.
R. quorum hæres ipſe eſt, tenuer. ſibi & hæred. de corporibus ipſo-
rum I. & C. exeuntibus ex dono & conſeſſione H. de C. per ſi-
nem inde in Cur. Domini E. & c. ſui noſtri levatum, & quæ
poſt mortem prædict. I. & C. ad manus ipſius R. virtute finis
præd. devener. vos nihilomin. ipſum R. in terras & tenement. præd.
quod ſic tenent. in feod. talliato, pro centum libris nobis pro arre-
rag extant. manerii de Offord. præſat. I. per vos poſtquam guber-
nacula regni ſuſceperimus, & ten. præd. dictis I. & C. in feod. tal-
liato ſic data & conſeſſ. fuer. commiſſ. reddend. omiſſ. tam præd.
hæred. prædict. I. quam tenent. terrar. & tenement. quæ fuer. ipſi-
us I. in feodo ſimplici, qui de debitis ſuis de jure debent onerari
& ſufficient. habeant, unde debita illa levare poſſint, diſtringi-
tis, & ipſum ea occaſione inquietatis multipliciter & gravatis
minus juſte, &c. ſuper quo nobis ſupplicavit ſibi per nos remedium
adhiberi: Nos nolentes præſat. R. in hac parte injuriari, vobis
mandamus, quod ſi vobis modo legitimo conſtare poterit meſ. &
terras præd. prædictis I. & C. in forma præd. data & conſeſſ.
fuiſſe, ipſumque R. aliqua alia terras & tenementa quæ fuerunt
præd. I. præter eadem meſ. & terram, quæ ad manus ſuas vir-
tute finis devenerunt, non tener. ac dictum hæredem ſeu tenent.
præd. ſufficient. habere, unde dicta debita levare poſſint, ſicut præd.
eſt tunc præd. R. de præd. centum libris erga nos exonerari, &
quietum eſſe faciat, illos qui inde de jure onerari debent, prout
juſtum fuerit, onerantes. Teſte, &c.*

And by that Writ it appeareth, that if the heir or the other Ter-tenants were not ſufficient for to pay the Debt, the Lands which the heir hath in tail ſhall be charged; for ſome ſay that the King is not bound by the Statute of *Donis*, &c. but that he is in the ſame caſe he was before; *Quare* thereof.

And

And if a man do alien his Lands in fee, and afterwards become indebted to the King, &c. If the Alienee be distrained for that Debt, he shall have a special Writ to the Treasurer and Barons of the Exchequer, rehearsing the whole matter, commanding them for to surcease, &c.

And so if a man be distrained for a debt or duty due to the King, as Executor, or as Pledge for him who is the King's Debtor, he shall have a special Writ unto the Treasurer and Barons of the Exchequer, to enquire thereof, and to do right.

Writ of Formedon in the Remainder.

THE Writ of *Formedon* in the *Remainder* lieth, where a man giveth lands to one in Tail, the Remainder unto another in Tail, and afterwards the first Tenant in Tail dieth without Issue of his body, and a stranger doth abate and deforce him in the Remainder; he in the Remainder, or his heir, shall have that Writ of *Formedon* in remainder.

H And so if the first Tenant in tail alieneth in fee, and dieth without issue of his body begotten, he in the remainder in fee shall have a Writ of *Formedon* in the remainder to recover his Estate, &c.

And if a man giveth lands for term of life, the remainder to another, and the heirs of his body begotten, and the Tenant for life dieth, and a stranger abateth and deforceth him in the remainder, that he cannot enter, he in the remainder, or his heir, shall have *Formedon* in remainder to recover his Estate, &c.

So if a man make a Gift in tail, the remainder in fee to another, and the Tenant in tail alieneth in fee or in tail, or for life, and dieth without issue, he in the remainder in fee or his heir shall have a Writ of *Formedon* in remainder to recover that Land.

And it seemeth the same Law shall be, if a man lease lands for term of life, the remainder to another in fee, and the Tenant for life doth alien in fee, or in tail, or for life, and dieth, and a stranger abateth and deforceth him who ought for to have the remainder: then he in the remainder, or his heir, shall have a *Formedon* in the remainder to recover that Land: *Quod vid. 24 E. 3.*

A And that appeareth to be but reasonable, because he hath right for to have the Land; and then it is but reason that he have an Action for to recover the same: And that appeareth by the Statute of *West. 2. cap. 24* which willeth,

[218] *Quod quotiescumque de cetero evenierit in Cancellar. quod in uno casu reperit. breve, in consimili casu cadente sub eodem jure, & simili remedio indigente; concordent Clerici in Canc. in brevi faciend.* for which it seemeth that such Writs are granted.

And also upon the Statute of *Donis conditionalibus*, there is not the Writ of Formedon given by exprels words, but a Writ of Formedon in the Descender; but yet it was never doubted, but that if a man make a Leafe for Life, the Remainder in tail to another, that he in the remainder in Tail, or his heir should have a Writ of Formedon in the Remainder, after the death of the Tenant for life, if he were deforced of the Land; and that is by Equity of the Statute of *Donis*, as it seems: For no Formedon in the Remainder is given by any Statute; and therefore it seems it shall be taken by Equity of the Statute; yet some have doubted thereof; and the form of the Writ for him who claimeth the Remainder in Fee simple, after the Estate tail determined, is such:

Rex Vic. &c. Præcipe A. quod, &c. reddat. B. unum mesuag. xx. acr. terr. &c. quæ C dedit D. & hæred. de corpore suo exeuntibus ita quod si idem D. sine hæred. de corpore suo exeunt. obierit, præd. mesuag. & xx. acr. terr. cum pertinen. præf. B. & hæredibus suis remanerent. Et quod post mort. prædict. D. præfat. B. remanere debent per formam donationis prædict. eo quod præd. D. obiit sine hærede de corpore suo exeunte, ut dicit, & nisi, &c. tunc sum B

And for the heir of him upon whom the Remainder was entailed: Thus,

Et quæ post mort. præd. D. & B. præf. I. filio & hæred. præd. B. remanere debet per form. &c. eo quod præd. D. obiit sine hæred. de corpore suo exeunte, ut dicit, & nisi, &c.

Ann if a Leafe be made for term of Life, the Remainder unto another, and unto the heirs of his body begotten; Now after the death of Tenant for life, if he in the Remainder be deforced of the Land by abatement of a stranger; Then he shall have such Writ:

Quod A. debet B. ad vitam ipsius B. ita quod post mortem ejusdem B præd. mess. & xx. acr. terr. cum pertin. D. & hæred. de corpore suo exeuntibus remanerent, & quod post mortem præd. B. & D. præf. W. filio & hæredi ejusdem D. remanere debent per formam, &c.

And if a Reversion be granted to another in tail, and the Tenant for life dieth seised, and the stranger abates and enters the Land; the Grantee in Reversion shall have a Formedon in such form:

Quæ

Que G. dedit T. ad vitam ipsius T. & que idem G. postmodum concessit prefat. M. & P. quondam viro suo habend. post mortem prefat. T. prefat. P. & M. & hered. de corp. ipsor. P. & M. exeuntibus, & que post mortem prefat. T. prefat. M. remanere debent per form. concessionis prefat. ut dic. &c.

E And if A. give a Manor except 13 s. 4 d. rent to R. and I. his wife, and to the heirs of their two bodies begotten, and the remainder to one I. in fee, and afterwards R. aliens one house and one acre of Land to one man, and three acres to another, and two acres of Land to a third person, and the residue of the Manor unto one B. in Fee, except the rent of 13 s. 4 d. and afterwards the husband and wife die without issue betwixt them; he in the remainder shall have such Writ against the Alience.

Præcipe D. quod, &c. reddat I. manerium de F. cum pertin. exceptis uno mess. sex acr. terr. & tresdecim solidat. & quatuor denar. redditus in eodem manerio. Et præcipe G. quod, &c. reddat eidem I. unum mesuag. & xx. acr. terr. cum pertin. in F. Et præcipe T. quod, &c. reddat, eidem I. tres acr. terr. &c. Et præcipe L. quod, &c. reddat eidem I. duas acr. terr. cum pertin. quod A. reddit R. & I. uxori ejus & hered. de corporibus ipsorum R. & I. exeunt. ita quod si iidem R. & I. sine her. de corpor. &c. obierint, prædict. mess. sex acras terr. & maner. except. mes. sex acr. terr. & redditu præd. prefat. I. & heredibus suis remaneant, &c.

And by that it appeareth, That a man shall have a Writ of Formedon in Remainder against several Tenants by divers *Præcipes* in one Writ.

C And if a man lease Lands for life, the Remainder in Tail, &c. the Remainder over in fee to another, and the Tenant for life dieth, and the Tenant in Tail alieneth in Fee, and afterwards the Alienee doth alien two parts of the Land to one Tenant, and the third part of the Land to another Tenant, and then the Tenant for life dieth, and then the Tenant in tail dieth without issue: He in the remainder in fee shall have a Formedon in the remainder, in such form:

Præcipe A. quod, &c. redd. B. duas partes unius mes. cum pertin. in N. Præc. F. quod, &c. reddat eidem B. tertiam partem unius mes. cum pertin. in eadem villa, quas D. dedit C. ad vitam ipsius C. ita quod post mortem ipsius C. præd. due partes & tertia pars F. & hered. de corpore suo exeunt. remanerent & si præd. F. sine her. de corpore suo exeunte obierit, præd. due partes & tertia pars prefat. B. her. suis remanerent, & que post mort. pd. C. & F. prefat. B. remanere debent per form. donationis pd. eo quod. pd. F. obiit sine hered. de corpore suo exeunt. ut dicit, & nisi, &c.

And by that appeareth how that he shall have one Writ by several *Præcipes* against several Tenants.

[219] If a man lease to one twenty acres of lands for life, and dieth, and the reversion descendeth to his brother, and he dieth, and the reversion descendeth to his two sisters, and they do make partition of the Lands, and ten acres are assigned to one sister to have to her and her heirs, and the other ten acres are allotted to the other sister and her heirs; and one of the Coparceners grants the reversion of her part and ten acres to a man and his wife, and the heirs of their two bodies begotten, and afterwards the Tenant for life dieth, and a stranger doth enter and abate in the land; the husband and the wife who are in the remainder shall have a writ of Formedon in the remainder in this form :

Præc. R. de N. quod redd. K. & A. uxori ejus decem acr. terr. cum pertinentiis in N. quas una cum aliis decem acr. terr. cum pertinentiis in eadem villa R. de S. dedit W. ad totam vitam suam, & quas M. de B. soror & una hered. N. de S. fratri & her. præd. R. de S. cui quidem M. reversio præd. decem acr. terr. assignata fuit in purpartem suam, ipsam de prædictis viginti acris terr. per partic. inter ipsam & Luciam soror. & alteram hered. prædict. N. de S. inde factam post mort. præd. W. contingent. concessit præfat. R. & her. de corporibus ipsorum R. & A. exeunt post mort. ejusd. W. habend. & quæ post mortem ejusd. W. præf. R. & A. remanere debent per formam concessionis prædict. ut dicunt, & nisi fecerint, & prædict. &c.

And if he who hath the remainder, or his heir be once ^A seized of the lands by force of the remainder; then he shall never have a Formedon in remainder for that land, but a Formedon in descender, because the remainder is once executed. And no Tenant shall have a Formedon in descender, nor in remainder, where he is once in possession by force of the entail, or by force of the remainder; for after that he hath possession of the Land by force of the tail, or by force of the remainder, if he be put out, he shall have an Assise of *Novel Disseisin*, or the Writ of *Quibus*, in the nature of an Assise, &c.

If a Remainder be given to two or three heirs, and one ^B dieth, and the other surviveth and afterwards dieth, his heirs shall have a Formedon in the remainder, as Heir to him, without mentioning in the Writ that he survived the other Joint-tenant, &c.

And in a Formedon in the remainder, he ought for to ^C shew the Deed thereof, if the Demandant do require Oyer of

of the Deed, but in the Count he shall not speak of any Deed; but the Tenant ought for to demand Oyer thereof, and then the Demandant shall shew the same, and in the Count shall not mention the Deed.

- D And if the Remainder be once executed in the Writ of Formedon in the Descender, he shall never mention that Remainder, but the general Writ of Formedon shall serve in that case, as appeareth by the Rule in the Register.

Writ of Formedon in Reverter.

- E **T**He Writ of Formedon in the reverter lieth where one giveth lands to a man in tail, or in frankmarriage with his daughter, and afterwards the Donee or his heirs dieth without issue of his body; then the Donor or his heirs may bring a Writ of Formedon in the Reverter against him who is Tenant of the Lands so given.

And so if one man giveth lands unto another in tail, and the Donor granteth the Reversion in fee unto another, and then the Donee in tail dieth without heir of his body, the Grantee of the Reversion shall have a Writ of Formedon in the reverter to recover that land: but if he grant the reversion unto another in tail, and then the Donee dieth without heir of his body, then that Grantee of the reversion shall have a special Writ, as appeareth before, amongst the Writs of Formedon in the remainder, and for the heir of the Donor, the form of the Writ is such:

See before
218. D.
2 E. 3. Ma.
Dy. 125.
6 E. 3. 5.

Præcipe A. & c. quod redd. unum mes. & viginti acr. terr. cum pertin. in G. quod C. pater præd. B. cujus hæres ipse est, dedit I. & E. uxori ejus & hæ. de eor. corporibus exeunt. & quod post mort. præd. I. & E. ad præf. B. reverti debet per form. donationis præd. I. & E. obierunt sine hæ. de corporibus suis exeunt. ut dicit, & nisi, &c.

Vide 4 Eliz.
Dy. 216. A.
22 H. 6. 36.

- F And if lands be given in tail, the remainder to another in tail, and afterwards the first Tenant in tail dieth without issue, and the second Tenant in tail in the remainder doth enter into Religion, and is professed; the Donor or his heirs shall have such a Writ of Formedon in the Reverter:

Quod C. pat. D. cujus hæ. ipse est, dedit F. & hæredibus de corpore suo exeunt. ita quod si idem F. sine hæred. de corpor. suo exeunt. obierit, prædicit. mes. &c. H. & hæred. de corpore suo exeunt. remaner. & quod post mortem præd. F. & postquam præd. H. habit. religion. assumpsit ad præf. D. reverti debet per form. donation. præd. eo quod præd. F. obiit sine hæ. de corpore suo exeunte, &c. & nisi, &c.

N n 4

And

And if C. give lands in tail to E. and to F. his wife, and G. unto the heirs of their two bodies begotten, and the said C. hath issue G. and B. and dieth, and afterwards G. dieth, and B. granteth the reversion to H. for life, and afterwards E. dieth and F. dieth without issue of their bodies, &c. B. shall have a Formedon in the reverter in this form:

[220] *Quod C. dedit E. & F. uxori ejus, & hered. de corporibus, &c. exeuntibus, & quod G. filius & heres predict. C. frat. pred. B. cujus heres ipse est, post mortem pred. E. concessit H. ad totam vitam suam post mortem pred. F. habend. & quod post mortem predict. F. & H. ad prefat. B. reverti debet per formam donationis & concess. pred. eo quod predict. E. & F. obier. sine hered. de corporibus suis exeuntibus, &c.*

And it seemeth in that case, that if H. had survived F. and had entred into the Land, and had been seised of the Land for term of his life, and then had died. that then the said B. shall not have a Formedon in the reverter, but a Writ of Entrie *ad terminum qui præterit*. But if H. have not entred into the land after the death of F. then the said B. shall have the Writ of Formedon in the reverter. But if H. have entred into the Land after the death of F. and had aliened the Land in fee. then B. ought to have had a Writ of Entrie in *consimili casu* during the life of H. and after the death of H. a Writ of Entrie *ad communem legem*.

And if F. lease Lands unto P. for term of life, and hath issue a son and a daughter, and dieth, and the Son granteth the reversion to I. and to the heirs of his body begotten, and afterwards the Tenant for term of life dieth, and the Tenant in tail dieth without issue, &c. and then the son who was donor dieth, the daughter shall have a Formedon in the reverter in this form:

Quod F. dedit P. ad totam vitam suam, & quod T. filius & her. pred. F. frater pred. B. cujus her. ipse est, concessit I. habend. post mortem ipsius P. eidem I. & hered. de corpore suo exeunt. & quod post mortem predict. P. & I. prefat. B. reverti debet per form. donation. & concessionis predict. & quod prefat. I. obiit sine her. de corpore suo exeunte, ut dicit, &c.

And if Lands be given in tail, and the Tenant in tail hath issue two daughters, and afterwards one of the Daughters hath issue a Daughter B. and the other Daughter hath issue another Daughter C. and afterwards B. hath issue I. and then all the daughters die, and then the said I. dieth without issue of his body, the donor or his heir shall have such Writ:

Et qui post mort. prædict. E. & F. & M. & A. filiar. & her. eorund. E. & F. & I. fil. præd. M. & her. eorundem M. & A. ad præf. I. de B. reverti debent, &c. eo quod prædict. I. &c. fil. prædict. M. obiit sine hered. de corpore suo exeunt.

C In a Formedon in the Reversion in his Count he ought to lay the Esplees in the Donor, and in the Donee.

D In a Formedon in the reverter he ought to mention the Eldest Brother who survived his Father, &c. because he held the Estate, although that he was not seised of the Land ; as if the Donor hath issue two Daughters and dieth, and the Eldest Son dieth before he entred into the Land. In a Formedon in the Reverter brought by the youngest Son, he ought to mention the Eldest Son, who was his Brother, because he was once heir to the Donee ; but if the Eldest die in the life-time of the Father, then the youngest Son in the Writ brought by him shall not mention him as heir to the Father, because he was never heir *in facto* to the Father, but in a Writ of Right, which is called *Præcipe in Capite*, brought by the youngest Son, as heir to his Father, altho the Eldest Son be dead in the life of the Father, yet in his count he ought to make mention of the Eldest Son, because by possibility he might have held the Estate, and have been heir to his Father.

E And if a man give Lands in Tail, and the Tenant in Tail hath issue and dieth, and the issue dieth without heir of his body before he entred into the Land, the Donor may bring a Formedon in the Reverter, supposing that the Donee died without issue, &c. and that Writ was awarded good, M. 18 E. 2. because the issue was not living at the time of the purchase of the Writ, and he cannot have a Formedon in the Reverter of the seisin of the issue, because the issue died before he had any seisin of the Land.

Writ of Ejectione Firmæ.

F **T**HE Writ of Ejectione firmæ lieth, where a man doth Lease Lands for years, &c. and afterwards the Lessor doth eject him, or a stranger doth eject him of his term, the Lessor shall have a Writ of Ejectione firmæ ; and the form of the Writ is such :

Vide 1 & 2 M. Dy. 117. Ingrave's Case.

G *Rex Vic. &c. Si A. fecerit, &c. tunc pone, &c. B. quod sit coram Justic. nostris, &c. ostensurus quare vi & armis manerium de I. quod præf. T. A. dimisit ad termin. quid nond. præterit, intravit, & bona & catall. ejusdem A. ad valent. &c.*

in

in eod. manerio inventa cepit & asportavit, & ipsum A. à firm. sua prædict. eiecit, & alia enormia ei intulit ad grave damnum, &c.

And there is another form of Writ thus :

6 R.2. Fitz.
Ejectione
firm. a cont.

Ostens. quare vi & armis manerium de B. quod I. præf. A. dimisit ad termin. 7. annor. infra termin. illud intravit, & illud per magnum tempus occupavit, & ipsum A. quominus exitus manerii præd. juxta form. dimis. præd. percipere potuit, impedivit, & bona, &c.

And in that Writ he shall recover his term again, if the term be not ended, and the Process is Attachment and Distress, and Process of Utlagary. And Anno 14 H. 7. in Ejectione firme brought against a stranger, the Plaintiff had Judgment for to recover his term, and thereupon the Defendant brought a Writ of Error, and the Judgment was affirmed, and execution awarded for the Plaintiff.

And 17 H. 8. such Judgment was given in the Common Pleas, that he should recover his term and his damages.

[221]

If a man Lease Lands for years, and afterwards suffer a feigned Recovery against him by a Writ of Entrie in the Post, or other Writ, if he who recovereth entreth, the termor shall have an Ejectione firme against him by force of the Statute of 21 H. 8. cap. 15. because the Statute giveth him power to retain, hold, and enjoy his term. And by that it appeareth, that he who recovereth doth wrong unto him, if he oust him of his term ; but before the said Statute, the Lessee could not have such Writ : because he who recovered came in by course of Law.

And if a man lease Lands for years, and afterwards granteth the Reversion in Fee, and the Lessee attorneth, now if the Grantee of the Reversion do put out the Termor he shall have an Ejectione firme against him. And so if the Reversion do Escheat, and the Lord by Escheat eject the Termor, he shall have an Ejectione firme against him.

And so if he in the Reversion be a Villain, and the Lord claim the Reversion, and afterwards eject the Termor, he shall have an Ejectione firme against him.

Writ of Aiel or Besaiel.

D **T**HE Writ of *Aiel* or *Besaiel* lieth, where the Grandfather or great Grandfather was seised in his demesne as of Fee of any Lands or Tenements of Fee-simple the day of his death, and dieth, and a stranger doth abate or entreth the same day upon him, and desorceth the heir, the heir shall have that Writ of *Aiel* or *Besaiel*, as the case is, and it behoveth not that the Grandfather die seised; or if he be seised the day that he died, it sufficeth to maintain this action; and the form of the Writ is such:

Note that in this Writ, a man cannot make title higher than his *Besaiel*; or the brother of his *Besaiel*, 3 E.

3. *Item non Fitz. Aiel. 6. 40 E. 3. 38.* It was found by Assise, that the Ancestor did not die seised, yet no Estoppel to have Cofinage, for if he were seised the day in which he died, it sufficeth.

E *Rex Vic. &c. Præcipe A. quod iuste, &c. redd B. unum messag. cum pertin. in E. de quo W. avus præd. B. avia præd. B. vel proavus, vel proavia præd. B. cujus heres ipse est, fuit seist. in Dominico suo, ut de feodo die quo obiit, ut dic. & nisi fecerit, & prædict. B. fecerit secur. &c. tunc sum. prædict. A. &c.*

In *Aiel* the Defendant said, that the *Aiel* had issue W. eldest Son, who survived

the *Aiel*, and committed Felony, and was abjured, and afterwards taken and is Eyre adjudged a Felon; and good Plea. 6 E. 3. *Fitz. Aiel.*

F And the Process in that Writ is Summons and Grand Cape before appearance; and after appearance, if the Tenant make default, a Petit Cape shall be awarded.

G And altho that the Ancestor go in Pilgrimage beyond the Sea, and there dieth, yet the Writ of *Aiel* shall be general, as is aforesaid.

13 E. 3. *Aiel* 2.

And so if the Grandfather enter into Religion, and is professed, the heir shall have a Writ of *Aiel*, if the stranger do abate, and the Writ shall be general, and shall not speak of his entry into Religion, or of his Profession, &c.

21 E. 3. 10. Br. Cofinage.

G And the Aunt and the Neece shall joyn in a Writ of *Aiel* of the seisin of their Grandfather, by equity of the Statute. And the Statute shall serve for those dying seised before the Statute, as for those dying seised since the Statute.

6. In *Besaiel*, the release of the *Aiel* Warranty is good Plea. 12 E. 3. Joynder in action.

And two Coparceners brought a Writ of *Aiel*, and by their Count they did suppose the Ancestor to be great Grandfather to the one, *Tresaiel* to the other, and yet it was adjudged good. And the Writ in the Register is such:

Rex

Writ of Cofinage.

Rex Vic. &c. Prac. A. quod iuste, &c. redd. B. & C. unum molendinum. &c. de quo D. avus prædict. B. & proavus præd. B. cujus hæred. ipsi sunt, fuit seiscitus, &c.

Writ of Cofinage.

THE Writ of Cofinage lieth, where the Trefaiel was seised in his demesn as of fee the day he died of any Land or Tenements, and dieth, and a stranger doth enter and abate, then his heir shall have his Writ of Cofinage. And the form of the Writ is such :

Rex Vic. &c. Prac. A. quod iuste, &c. redd. B. unum mes. cum pertin. in N. de quo W. consanguineus vel consanguinea præd. B. cujus hæres ipse est, fuit seiscitus in dominico suo ut de feod. die quo obiit, ut dicit, & nisi, &c.

And a man shall have a Writ of Cofinage of the seisin of the Brother of the Trefaiel.

22 E. 3. Brief 308. it is admitted that Trefaiel is Cousin. And the heir of the Lord who was his Trefaiel may have a Writ of Cofinage of the Rent of the Seigniorie against the Tenant, if he desorce him of the Rent, and may count of the seisin of his Trefaiel ; or if he will, he may have a Writ of Customs and Services against the Tenant at his Election.

46 E. 3. 15. 12 H. 7. 4. 4 E. 3. Aiel 4. And if a man may have a Writ of Aiel, he shall not bring a Writ of Cofinage, and if he do, the Tenant may abate the Writ by pleading the seisin of the great Grandfather ; and also a man shall not have a Writ of Cofinage of the seisin of his great Grandfather, but shall be put to his Writ of Befaiel, &c.

Nor a man shall not have a Writ of Cofinage of the death of his Uncle, because he may have an assise of Mortdauncestor of his seisin.

44 E. 3. 13. And Cofinage doth not lie between privies in blood, no more than an assise of Mortdauncestor, but shall be put to their *Nuper obiit*.

14 E. 3. Cofinage 6. And if a Trefaiel goeth beyond Sea and entreth into Religion, and be professed ; yet the Writ of Cofinage shall be general as the Writ of Aiel shall be. And the Process is Summons, Grand Cape, and Petit Cape.

Writ of Ad quod Damnum.

THE Writ of *Ad quod Damnum* lieth, where a man will give Lands or Tenements in Mortmain, as to a Religious House, or to a Body Politick in Fee-simple, then he ought for to have the Kings License, and the License of the chief Lords to make such Gift or Grant, and before such License be granted, the course is to sue unto the King to have a License to sue that Writ out of the Chancery, directed unto the Escheator, to enquire what damage it would be to the King, or unto other Persons, if the King do grant such License: and upon the Return of that Writ certified in the Chancery, the King ought to give leave, that he may alien or give in Mortmain; and that inquisition ought to be certified into the Chancery under the Seals of the Escheator and of the Jurors by whom the Inquisition was found. And the form of the Writ is such:

A *Rex dilecto sibi I. de K. Escheatori suo in com. L. salutem. Præcipimus tibi, quod per sacramentum proborum & legalium hominum de Balliva tua vel de comitat. tuo, per quos rei veritas melius sciri poterit, diligenter inquiras, si sit ad damnum vel ad prejudicium nostrum vel aliorum, si concedamus B. quod ipse unum mesuagium, duas acras terræ, & unam acr. prati cum pertin. in W. dare possit & assignare cuid. Capellano divina pro anima ipsius B. & animab. patris & matris, ac antecess. suorum, & omnium fidelium defunctorum in Capella Beate Mariæ de W. vel in Ecclesia Parochiali beate Mariæ de S. singulis diebus celebraturo Habend. & tenend. eidem Capellano & successoribus suis Capellanis divina in Eccles. prædict. vel in ead. Capella pro animabus præd. singulis diebus, prout prædictum est, celebraturo in perpetuum, necne, & si sit ad damnum vel prejudicium nostrum, aut aliorum, tunc ad quod damnum & quod prejudicium nostrum, & ad quod damnum & quod prejudicium aliorum. Et quorum, & qualiter, & quomodo, & de quo, vel de quibus præd. mes. terra & pratum tenean. & per quod servitium, & qualiter & quomodo, & quantum valent per annum in omnibus exitibus, juxta verum valorem eorundem, & qui & quot sunt medii inter nos & præf. B. de Mes. terra & prato prædict. & quæ terra & quæ tenementa eidem B. ultra donationem & assignationem præd. remaneant, & ubi, & de quo, vel de quibus, teneatur, & per quod servitium, & qualiter, & quomodo, & quantum valeant per annum in omnibus exitib. & si terra & tenementa eidem B. remaneant ultra donationem & assignationem præd. sufficient. ad consuetud. & servitia tam de præd. mesuag.*

mesuag. terra, & prato sic datis; quam de aliis terris & tenem. sibi retentis, debita faciend. & omnia alia & singula onera quæ sustinuit, & sustinere consuevit, ut in sectis, visibus franci pleg. auxiliis, tallagiis, vigiliis, finibus, redemptionibus, amerciamentis, contributionibus, & aliis quibuscunque oneribus emergentibus, sustinend. Et quod idem B. in assis, juratis, & aliis recognitionibus quibuscunque poni possit, prout ante donationem & assignationem prædict. poni possit, ita quod patria per donationem & assignationem præd. in ipsius B. defectu, magis solito non oneretur seu graveur, & inquisitionem inde distincte & aperte factam nobis in Cancell. nostra sub sigill. tuo & sigillis eorum, per quos fact. fuerit sine dilacione mittatis, & hoc breve, Teste, &c.

Or thus: Quod heredes ipsius B. in ass. juratis. & aliis recognitionibus quibuscunque poni possint, prout antecessores sui ante donationem & assignationem præd. poni consuever. ita quod patria, &c.

By which it appeareth, that it is damage to the Country, that a Freeholder who hath sufficient Lands to pass upon Assises and Juries, should alien his Lands in Mortmain, by which alienation his heirs should not have sufficient Lands after the death of the Father, to be sworn in Assises and Juries.

And by the Rule of the Register, If a Chaplain or a Woman will give their Lands or Tenements in Mortmain; yet in the Writ of *Ad quam damnum*, shall be that Clause, *Et quod iidem, &c. in assis, juratis, & aliis recognition. quibuscunque poni possint*; By which it appeareth, they ought to have sufficient Lands, besides the Lands to descend to their heirs.

And if a Chaplain and a Layman will alien in Mortmain jointly by License, then the Writ of *Ad quod damnum* shall be in this form:

Et quod idem A. & B. & hered. prædict. B. Capellani, in assis, juratis, &c. poni possint, prout idem A. & antecessor ipsius B. Capellani ante donationem, &c. poni consuever. ita quod patria, &c. in ipsius A. & hered. prædict. B. defect. magis solito non oneretur, &c.

And if one Abbat will give Lands or Tenements in Mortmain, to another Abbat or Prior, or body corporate, yet he ought to have the King's License so to do, because of the words of the Statute of Mortmain. *Ita quod terr. & tenementa ad manum mortuam non deveniant quoquo modo.* And there he ought for to see a Writ of *Ad quod damnum* to enquire as aforesaid. But in the Writ shall be this Clause, *Et quod idem Abbas, &c. in ass. & jurat. &c.* nor that Clause, *Ita quod*

quod patria, &c. shall not be put in that Writ of *Ad quod dampnum*. But now the Common experience is, that they will not sue the Writ of *Ad quod dampnum* when they purchase leave to alien in Mortmain, but the use is, to have these words in the end of the King's Patent of License; *Et hoc, absque aliquo brevi de Ad quod dampnum, seu aliquibus aliis brevibus, inquisitionibus, aut mandatis nostris superinde habend. & prosequend.* But it seemeth those Patents are dubious, whether they be good or no; if it be evidently proved, that such Patents are unto the damage of others who are the King's Tenants, and by which the King's Tenants ought to have Wardships or Escheats, &c. and by which the King loseth the Wardship of his Tenants, or that the King loseth any advantage which he might have, if such Patents were not granted. And therefore I conceive, that the best course is, to sue forth such Writs of *Ad quod dampnum*, to enquire to what damage such Licenses in Mortmain shall be to the King or others, so that the King be not deceived in his Grant. And see a good cause for the same in the Title of *Grants* in the Abridgment, H. 16. E. 3.

A And there is another Writ of *Ad quod dampnum*, if it be to the damage, &c. If the King grant to B. that he may give five Houses, &c. to C. Guardian of the Chappel of our Lady St. Mary, and to his Successors Guardians and Chaplains of the foresaid Chappel, for the maintenance of the said Guardian, and two Chaplains to do Divine Service in the said Chappel, and in the Church of P. &c. in the Honour, &c. and for the Souls, &c.

B And if the King will give License to one to grant a Rent unto an Abbat and his Successors, yet he ought for to sue forth a Writ of *Ad quod dampnum*, if he have not these words in the Patent; and this without any Writ of *Ad quod dampnum*, &c. And the form of the Writ is such:

Si concedamus eid. A. quod ipse cent. marc. redditus cum pertin. in N. dare possit, & assignare dilectis nobis in Christo Abbati & Conventui de N. ac Priori & Monachis in Prioratu S. Jacobi Bristol. quæ est cella ejusd. Abbatis commorantibus, ad inveniend. duos Capellanos, &c. in Eccles. prioratus præd. tenend. eisdem Abbati & Conventui ac Prioratui & Monachis in dicto Prioratu commorantib. & successorib. suis, ad inveniend. duos Capellanos, &c. in Eccles. Prioratus prædict. ut præd. est, singulis diebus celebratur. in perpetuum necne. Et si sit ad dampnum, &c. ad quod dampnum, &c. & de quo, vel de quibus præd. redditus teneatur, & per quod servic. & qualiter, & quomodo, & qui, & quot sunt medii, ut in primo brevi.

And

And it is not said in the writ, what the value is yearly, because Rent ought not to be extended.

And if a man sue to the King for a License to give an Advowson to two Chaplains, and to their Successors to hold to their proper use, and that they may hold the same to them and their Successors, appropriate for ever to say Divine Service, &c. he shall have a writ of *Ad quod damnum*, to enquire, what damage such grant would be to the King or others, and that writ appeareth in the Register. And the writ of *Ad quod damnum* the substance of the License, to alien in Mortmain, ought to be expressed.

And if a man will exchange Lands, Tenements, or Rents with another Abbat, or Body corporate, upon the License granted, he ought to sue forth a writ of *Ad quod damnum*; and in the writ both the Lands which are given, and the Lands which are taken in exchange, ought to be mentioned, and to enquire of them as afore is said.

There is another manner of form of *Ad quam damnum* where the King granteth a License unto an Abbat or a Prior to purchase twenty Pound Land, and afterwards one man will give Lands to the said Abbat of the value of five Pounds, another will give him Lands of the value of forty Shillings, and another man Lands of the value of twenty Shillings; the form of the writ of *Ad quod damnum* shall be such:

2 H. 7. 6. Rex Escheatori, &c. *Præcipimus tibi, &c. si sit ad damnum, &c. si concedamus A. quod ipse unum mesuagium, & centum acris terræ in N. B. de C. quod ipse unum mesuagium, & 40 acras terræ cum pertin. in eadem villa E. de F. quod ipse 30 acras terræ in eadem villa dare possit, & assignare dilectis nobis in Christo, &c. habend. sibi & successoribus suis in partem satisfactionis 20 l. terrarum & reddituum per annum, quas Dominus Edwardus nuper Rex Angliæ avus noster per literas suas patentes eisdem Abbati & Conventui, tam de feodo suo proprio quam alieno, exceptis terris & tenementis quæ de ipso avo nostro tenebantur in capite concessit acquirend. & etiam I. de N. quod ipse unum mesuagium cum pertinent. in eadem villa dare possit & assignare eisdem Abbati & Conventui, habend. & tenend. sibi & successoribus suis in perpetuum in excambium, pro uno mesuagio in eadem villa eidem I. de N. per præd. Abbatem & Conventum dandis & concedend. habend. & tenend. eidem I. de N. & heredibus suis in excambium præd. sicut prædictum est in perpetuum necne, & si sit, &c. ut supra.*

17 de 16 El.
Plow. Com.
457. D.

And by that writ it appeareth, that he may have one writ for divers Purchases to be made. And also that a License made unto an Abbat, in the time of one King,

is good to purchase Land by in the time of another King.

- H There is another Writ of *Ad quod damnum* where the King granteth to an Abbat, or to a Bishop, Licence for to purchase an Advowson, and to appropriate the same to him and his Successors for ever.

And another Writ where the King granteth unto an Abbat or Bishop licence for to appropriate an Advowson whereof they are seised in fee in their own right.

By which it appeareth, that a Bishop or an Abbat could not have appropriated an Advowson whereof they were seised in fee in their own rights, without the King's Licence; and if they did, it was forfeited for mortmain.

- I And if an Abbat holdeth of another man by a certain Rent-service, the Lord cannot release unto the Abbat that Rent without the King's licence; and if he do, it is mortmain, and the King shall have the Rent; and therefore is the Writ of *Ad quod damnum* ordained, that where the Lord hath licence to release unto the Abbat that Rent, to enquire to whose damage the same shall be, &c. as it shall be of Lands, &c.

- A There is another form of *Ad quod damnum*, where the King giveth a licence to alien Lands and an Advowson which are holden of him in *Capite*, unto an Abbat, and that he do appropriate them. And another form of Writ where the King granteth Licence to one, to alien certain Lands, and a reversion of other Lands to a Chaplain in mortmain.

And if the Villain of an Abbat or Prior do purchase Lands or Tenements in fee, the Abbat or Prior cannot enter into them without the King's Licence; and if he do, it is mortmain. And it seemeth that the Law is such, because there is a Writ of *Ad quod damnum* in the Register, to enquire to whose damage the same is; and if the King granted such Licence unto an Abbat or Prior, that they may enter into such Lands or Tenements which their Villains have purchased.

- C And see the Stat. *De Religiosis*, how that case shall be taken to be within the words of the Statute, or by equity of the Stat.

And it appeareth by the several forms of Writs of *Ad quod damnum* which are in the Register, that the Writ ought to be made according to the Letters Patents of Licence, because he ought to rehearse the effect of the Letters Patents therein; and therefore the forms of the Writs of *Ad quod damnum* do vary as the Letters Patents themselves do vary.

- D And it appeareth by the Register, That if a man do purchase Letters Patents of licence to give lands unto an Abbat in exchange for a Rent, which the Abbat releaseth to him, &c. that he shall have a Writ of *Ad quod damnum* thereupon.

Q

And

38 Aff. 52.
Br. Mortm.
20. it is no
Mortmain.
21 E. 3. 18.
Br. Mortm.
16. & 31. it
is no Mort-
main, be-
cause the
Rent is ex-
tinct.

And if a man do purchase a Licence to found a house with Lands, or to make a Prebendary, and to give Lands to the same, &c. that he ought to have a Writ of *Ad quod damnum*, &c. upon the same. E

And if a man doth devise Lands or Rents to his Executors and to their Heirs, to dispose according to his will, and afterwards he maketh his will, that they give the same in Mortmain; they ought to have the King's Licence to make the Grant, and a Writ of *Ad quod damnum* upon the same, as appeareth by the Register. F

If an Abbat, or a Dean and Chapter, have a Rent in fee issuing out of Lands, and the Tenant of the Land will grant by his Deed, that they and their Successors shall distrain for that Rent in other Lands, it appeareth by the Register, that he ought to have the King's Licence to make such Grant. And a Writ of *Ad quod damnum* shall be to enquire what damage or prejudice the same shall be to the King or others, &c. and yet it is hard to prove, how that shall be taken to be within the words of the Statute of Mortmain, because such Grant is a good Grant of a Rent in fee, although that there were not such Rent before to the Abbey, or Dean and Chapter. It seemeth that the Grant made without Licence shall be as a new Grant in Law. G

9 H. 6. 9.

41 E. 3. 15.

9 H. 6. 9.

1 Aff. 10.

Br. Aff. 105.

There is another manner of Writ of *Ad quod damnum*, and that is, where the King's Tenant will alien his Lands which he holdeth of the King to another in fee, or in tail, or for life, then by the Course of Law he ought to have the King's Licence by his Letters patents so to do, and before the Alienation be made, the King ought to be certified by a Writ of *Ad quod damnum*, what damage or prejudice that Alienation shall work to the King: but at this day that Writ is not used to be granted, but only the Licence to alien without regard to any Writ of *Ad quod damnum* to enquire thereof. But yet such Licence must not be allowed of by the Justices when the same is shewed, without bringing a Writ out of the Chancery unto the Justices, which is called *Quod permittat*, &c. for which see M. 33 H. 6. in title *Fines*. And the form of the Writ of *Ad quod damnum* is such: H

Rex Escheatori, &c. *Præcipimus, &c. inquisit. si sit ad damnum vel præjudicium, &c. Si concedamus I. quod ipse de manerio suo de N. cum pertin. quod de nobis tenetur in capite, ut dicitur, feoffare possit P. habendum & tenendum sibi & heredibus suis de nobis & heredibus nostris, per servitia inde debita & consueta in perpetuum, necne. Et si sit ad damnum vel præjudicium nostrum aut aliorum, &c. Et quod præjudicium*

judicium aliorum, & quorum, & qualiter, & quomodo. Et si manerium prædict. teneatur de nobis in Capite, ut prædictum est, an de alio. Et si de nobis, tunc per quod servitium, & qualiter, & quomodo, & quantum prædict. manerium valeat per annum in omnibus exitibus juxta verum valorem ejusdem. Et si quæ terræ & tenementa remaneant eidem I. ultra manerium prædict. tunc quæ terræ & tenementa, & ubi, & de quo, vel de quibus teneantur, utrum videlicet de nobis, an de alio, & si de nobis, tunc per quod servitium, & qualiter, & quomodo. Et si de alio, tunc de quo, vel de quibus, & per quod servitium, & qualiter, & quomodo, & quantum valeant per annum in omnibus exitibus. Et inquisitionem inde distinte & aperte, &c.

And if the King will grant a Licence unto his Tenant who holdeth of him in *Capite* to alien unto another in fee, and to take back an Estate unto him and his wife, and unto the heirs of their two bodies begotten, from the same Alienee; and for default of such issue, the remainder unto another in fee tail; and for default of such issue, the remainder to the right heirs of the first Donee, he in that case shall have a Writ of *Ad quod damnum*, &c. to enquire, &c. and yet such Writs are not used to be granted upon such Licence.

There is another writ in the Register, that if the King's Tenant doth alien his Lands, of which a woman holdeth part in Dower for term of her life, and another holdeth other parcel thereof for term of her life, and he himself holdeth the residue in fee. Now he shall have a writ of *Ad quod damnum*, rehearsing all the Estates and the Licences.

B If the King granteth Lands to one for life, and afterwards granteth the reversion to D. in fee, and then D. dieth, and his heir granteth the reversion to R. and W. in fee, and afterwards R. and W. grant the reversion to M. for life, and all those Grants are made without Licence, and afterwards M. sueth to have a Licence, that she may enter after the death of the first Tenant for life; she shall first have a Writ of *Ad quod damnum*, to enquire, &c. and the Writ shall be such:

Rex dilecto Clerico suo F. de C. Escheat. suo in Comitatu C. salutem. Supplicavit M. ut cum A. dudum concessisset quod unum mesuagium cum pertin. in N. quod de nobis tenetur in capite, ut dicitur, & quod I. & B. uxor ejus tenent ad vitam ipsius B. ex dimissione prædict. A. quod etiam post mortem ipsius B. ad præfat. A. & hered. suos reverti deberet post mortem ejusdem B. D. & hered. suis remaneret, ac F. filius & heres ipsius D. ulterius concess. quod mesuag. prædict. cum pertin. quod ad ipsum F. & her. suos ratione concessoris &

Writ of Ad quod damnum.

attornamenti sibi in hac parte fact. post mort. ejusdem B. reverti deberet, post mortem ipsius B. R. & W. & hered. suis remaneret, iidemque R. & W. concessissent, quod mes. prædict. cum pertin. quod ad ipsos R. & W. & hered. suos ration. concess. & attorn. præd. sibi de præmiss. fact. post mortem ipsius B. reverti debet, post mortem ejusdem B. præf. M. ad totam vitam suam remaneret. ita quod post mortem ipsius M. mis. illud cum pertin. post mortem ipsius B. K. & hered. ipsius K. remaneret licentia nostra super hoc non obtenta, Velimus concedere eidem M. quod ipsa mes. illud cum pertin. post mortem ipsius B. ingredi possit & tenere ad totam vitam suam de nobis & heredibus nostris per servitia inde debita & consueta, ita quod post mortem ipsius M. præd. mes. cum pertin. præfat. K. & heredibus ipsius K. remaneat, tenend. de nobis & hered. nostris per servitium supradict. in perpetuum: Nos per vos certiorari volentes, si absque damno & præjudicio nostri aut alterius cujuscunque supplicationi prædict. annuer. velimus in hac parte, vobis mandamus quod per sacramentum, &c. (ut supra usque ibi) aut aliorum, si concedamus præfat. M. quod ipsa mesuag. prædict. cum pertin. post mortem ipsius B. ingredi & tenere possit in forma prædicta necne. Et si, &c. (ut supra.)

And by that it appeareth that an *Ad quod damnum* shall be awarded, where the King granteth a Licence unto one for to enter into the Land, which Land the King might grant for a fine for alienation. And also it doth appear by that writ, That a Clerk and a Chaplain was then Escheator of the County.

And if B. the King's Tenant doth alien to A. in fee, and afterwards A. giveth back the same Lands to the same B. and C. his wife in tail, and then A. dieth, and then B. dieth without heir of his body, and afterwards D. brother and heir of A. doth release all his right in the Land unto C. who was the wife of B. in fee without the King's Licence, if the King will pardon that trespass for making of that release, a Writ of *Ad quod damnum* shall be awarded to enquire what damage or prejudice the same shall be to the King, and the writ appeareth in the Register; but such Writs are not used to be sued forth at this day, but such pardons are allowed for the Terretenant, without any such Writ of *Ad quod damnum*, &c. But yet if the King be damnified by any such pardon, in any point whereof he had notice; whether the same shall make void the pardon or not. *Quære.*

And if the King will grant to one to make a Ditch of a certain length in his own Land, next to the King's Pond adjoining to draw the Water from the Pool by the Ditch to his Mill, rendring yearly to the King and his heirs a certain

tain rent, a Writ of *Ad quod damnum* shall be awarded for to enquire what damage the same shall be to the King, and the Writ shall recite the Grant, and the Rent reserved.

E And if there be an ancient Trench or Ditch coming from the Sea, by which boats and vessels use to pass to the Town, if the same be stopped in any part by outrageousness of the Sea, and man will sue to the King to make a new Trench, and to stop the ancient Trench, &c. they ought first to sue a Writ of *Ad quod damnum*, to enquire what damage it will be to the King or others.

F And if the King will grant to any City the assise of bread and beer, and the keeing of weights and measures, an *Ad quod damnum* shall be first awarded, and when the same is certified, &c. then to make the Grant.

And it appeareth by the Register, that upon every Grant to be made by the King, of Lands, Tenements, Liberties, or other things that a Writ of *Ad quod damnum* shall be first directed to the Escheator, to enquire what damage it will be to the King or others; and in those Writs in the Register, appear notable forms of Grants made in divers manners; for in every Writ the manner of the King's Grant, and the effect thereof is specified and recited in the Writ of *Ad qd. damnum*.

A And if a man will give lands unto the King in fee, unto the intent that the King shall give them to a religious house, yet a Writ of *Ad quod damnum* shall be directed to the Escheator to enquire what damage that shall be to the King, or others, if the King should accept thereof, and give the same to the Religious house.

B And if the King seiseth Lands aliened in mortmain, and afterwards will give them again to the Abbat, &c. in fee, yet a Writ of *Ad quod damnum* shall be awarded, to enquire to whose damage it shall be, &c.

And so if an Abbat purchaseth Lands without Licence, and afterwards the King will pardon him for the purchase, and grant that he may retain and keep the Lands, yet an *Ad quod damnum* shall issue to enquire, &c.

C And if the King's Tenant doth alien without Licence, for which the King seiseth the Lands: if the King will restore the Lands and pardon the Trespass, yet the Writ of *Ad quod damnum* shall issue forth to enquire what damage it is to the King, and if he made such Grant; but that is not in use at this day; but to pay a fine, and upon the Licence to enter; without suing such Writ.

If the King be Lord, and there be Mesne and Tenant, and the Tenant holdeth of the Mesne by Homage and 20 s.

Writ of Ad quod damnum.

and the Mesne holdeth of the King in *Capite*, and afterwards the Mesne doth release unto the Tenant the 20 s. to hold to him and his heirs by homage, and 1 d. without the King's Licence, the King may seise those services; and if he will by his Grant make restitution to the Tenant Paravail, an *Ad quod damnum* shall be granted, to enquire to whose damage, &c.

And it appeareth by the Register, that if the King's Tenant doth intrude after the death of his Ancestor, without suing his Livery, if the King will pardon the intrusion, yet a Writ of *Ad quod damnum* shall issue to enquire to whose damage the King's Pardon shall be, &c.

If a Forester of one of the King's Forests, who holdeth his Office of the King, granteth the same to another, he ought to have the King's Licence; and before such Licence shall be granted, a Writ of *Ad quod damnum* shall issue, what damage such Licence shall be to the King.

And so if the King will licence one to cut cown his Trees or his Wood in his Forest, and to make assent of the Wood, or to put it to Tillage, a Writ of *Ad quod damnum* shall be awarded, as appeareth by the Register.

And if the King will grant parcel of his waste within his Forest to another in Fee, rendring Rent, and that the Feoffee may enclose the same with a hedge or ditch, &c. a Writ of *Ad quod damnum* shall be awarded, to enquire to what damage of the King or others the said Grant shall be.

And if he will lease the same for years, rendring Rent, a Writ of *Ad quod damnum* shall be awarded to the Keeper of the Forest, to what damage of the King or of his Forest the same shall be.

And if the King will grant part of his Free Chase to one in Fee rendring Rent, and that he may enclose the same with hedge and ditch, &c. a Commission shall be directed to certain persons, to enquire what damage to the King or others the same shall be, &c. and thereupon a Writ shall be directed to return the Enquest and Panel before the Commissioners at a certain day assigned by the Commissioners; and the Commissioners shall make a Precept to the Sheriff to do the same, and to return them at the day appointed by them by their Precept.

And now it appeareth by those Writs in the Register, that in ancient times, upon every Grant, Lease, Realease, Confirmation or Licence to be made by the King, that first a Writ of *Ad quod damnum* was to be awarded, to enquire

enquire of the whole truth and every circumstance thereof, and what damage or prejudice the King should have by the same; and upon such inquisition certified and returned, to make the Grants, Releases, Confirmations, or Licences.

But now the experience is contrary, but in the Patents of Grants of Licence they put in the end these words:

Et hoc absque aliquo Breui de Ad quod dampnum, seu aliquibus aliis Brevibus sive inquisitionibus aut mandatis superinde habend. fiend. aut prosequend', &c.

But in Patents of Licences, or in a Patent of Release or Confirmation made by the King, those words, *absque aliquo Breui de Ad quod dampnum*, are not in those Patents of Releases or Confirmations: But yet by reason of the ancient course and form of the Register, it seemeth that the Patents were the better if those words, *Et hoc absque alio Breui de Ad quod dampnum*, were put into the Patents. *Quare* of the rigour of the Law, what shall be done in those cases where the Patents want those words, &c.

Writ of being quit of Toll.

I **T**He Writ to be quit of Toll lieth, where the Citizens or Burgeses of any City or Borough have been quit of Toll throughout the Realm by grants of the King's Progenitors, or by prescription; then if the said Citizens, or any man of the said Cities or Boroughs, come with their Merchandizes unto any Fair or Market, and there sell them, or buy any Merchandize, if the King's Officer will demand Toll of them against the King's Charter, or against the Usage or Custom, then he may sue forth and have such writ: *viz.*

Rex Ballivis suis de I. salut. Cum per Chart. nostram concesserimus Burgens. Vill. nostra de S. quod ipsi & eorum hered. ac success. Burgens. ejusdem Villa, imperpetuum sint quiet. de Toloneo per totum regnum nostrum & potestatem nostram; vobis precipimus, quod ipsos Burgenses de Toloneo vobis in Villa nostra pred. prestando quietos esse permittatis, juxta tenorem Chartae nostrae pred. ipsos contra tenorem ejusdem non molestant. in aliquo seu gravantes. Teste, &c. [227]

A And upon that he may have an *Alias*, a *Pluries*, and Attachment against the Baliffs, or those that do grieve him: against the form of the Charter; and the *Pluries* is returnable in the King's Bench, or in the Common Pleas, at the will of him who would have it. And in that writ shall be the Clause, *Vel causam nobis significet.*

Writ of being quit of Toll.

And if the Grant to be quit of Toll be of the Grant of the King's Progenitors, then the form of the Writ is such :

Rex Ballivis I. de E. salutem. Cum inter ceteras libertat. Burgenſibus villa noſtræ de C. per Chartas progenitorum noſtrorum quond. Regum Angl. conceſſas, conceſſum ſit eiſd', quod ipſi & hæredes ſui imperpet. ſint quieti de Toloneo per totum Regnum noſtrum, quas quid. Chartas per Chartam noſtram jam confirma- vimus, & inſuper conceſſimus eiſd', quod licet ipſi aliqua vel aliquibus Libertatum & Quietantiarum in eiſd. Chart. content. hætenus plene uſi non fuerint, ipſi tamen, hæred. & ſucceſſores ſui Libertatibus & Quietantiis præd. & earum qualibet de cætero, abſque inquietatione vel impedimento, gaudeant & utantur ; Vo- bis præcipimus, &c.

But that laſt Clause ſhall not be in the Writ, if the King C have not made ſuch confirmation to them. And upon that he may have an *Alias*, and a *Pluries*, and *Attachment*, if need be, againſt thoſe who take the Toll, &c.

And the like Writ may be for thoſe who ought to be quit D of Murage, Pontage, Picage, Laſtage, Paſſage and the like, if they be grieved or diſturbed.

And it appeareth in the Register, that King Edward the firſt did grant unto Merchants, Strangers and Aliens, that they ſhould be quit of Murage, Pannage and Pontage, &c. If they were grieved and diſturbed for the ſame, they ſhould have ſuch Writ, viz.

Rex Collectoribus muragii, pannagii & pontagii in villa de S. ſalut. Cum pro præſtationibus & cuſtum. nobis per Mercat. extraneos & alienigenas de bonis & merciomoniiſ ſuis infra regnum noſtrum adductis, per Chart. celebris memoria Domini Ed', quondam Regis Angl', avi noſtri quam inſpeximus, conceſſum ſit eiſdem, quod ſi ipſi ſalvo & ſecure in regnum & poſtatem noſtr. veniant cum merchandiſis ſuis quibuſcunque, de muragio, pan- nagio & pontagio liberi & quieti, prout in Chart. præd. ple- nus continet' : Vobis mand' quod B. & ſocios ſuos Mercator. de Societat', &c. alienigenas, de muragio, pannagio & pontagio, in Villa prædict. præſtand. quietos eſſe permitt', juxta tenorem Char- tæ præd. ipſos cont. tenorem ejuſdem non moleſtantes in aliquo ſeu gravantes ; & Diſtriction', ſi eis ea occaſione feceritis, ſine di- latione relaxetis eiſdem ; & ſi quid ab eis a xx. die Auguſti, an', &c. ea occaſione levaveritis, id eis ſine dilatione reſtituat. Teſte, &c.

And if any City or Borough ought to be quit of Toll E for the Merchandiſes which they buy in another Town or place, if any of them be compelled to pay Toll, all the Corporation may bring the Writ by the name of their

their Corporation, and may have an *Alias* and Attachment thereupon, if need be, with these words at the end of the Writ, *Et districtionem, si quam eis ea occasione fecerit. &c.* as before.

F And the like Writ a man may have against those who will compell him to pay a certain sum of money towards reparation of any Bridge, of which he ought to be quit-
ted.

And it appeareth by the Register, that Spiritual and Religious Persons ought to be quit of Toll, Customs, Murage, Pontage and Pannage, and of the like, for their Goods; and if they be troubled to pay the same, they shall have such Writ :

Rex Ballivis suis de B. salut. Cum persone Ecclesiastica, secundum consuetudinem hacten. in regno nostro usitatam & approbatam, ad Toloneum, Pannagium & Muragium de bonis suis Ecclesiasticis alicubi in eodem regn. prestand. nullaten. teneant. vobis precipimus, quod R. Personam Ecclesie de E. ad Toloneum, Pannagium vel Muragium de bonis suis Ecclesiasticis vobis in Vill. nostra predict. prestand. non distringatis, contra consuetud. predict. dum tamen Merchandisas aliquas non exerceat de eis. & Districtionem, si quam, &c.

But Herle Justice said, that those words, *Dum Merchandisas aliquas, &c.* were of no effect, because, by his opinion, they are acquit of all things, although they do Merchandize : but now the Statute of H. 8. is that they shall not Merchandize.

And another form of Writ for Spiritual Persons is in this form :

Cum secundum consuetud. &c. obtentum, persone Ecclesiastica ad Toloneum aliquod seu aliam Custumam de bonis suis Ecclesiasticis, vel de aliis pro sustentatione sua emptis, prestare non debent; vobis precipimus, quod A. Person. &c. ad Toloneum aliquod vel aliam Custumam de bonis suis Ecclesiasticis venditis, seu de aliis pro sustentation. sua ibidem exempt. nullatenus distringatis, contra cons. pred. & Distriction. &c. ut supra.

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A By which Writs it appeareth how Spiritual Persons shall be discharged of those Tolls, and Impositions, and Exactions for their Goods which they sell or buy for their sustenance, &c.

Tenants of ancient Demeſne by the custom of the Realm ought to be quit of Toll, &c. in every Market, Fair, Town or City throughout the Realm; and upon that every one of them may sue to have Letters Patents under the King's

Writ of being quit of Toll.

King's Seal, to all the King's Officers, and to Mayors, Bailiffs, &c. and the form of the Patent is such :

Rex universis Ball. & ministris ubicunque infra regnum nostr. Angl. constitutis sal. Cum secundum cons. &c. [ut sup. per totum regnum nostrum] Vobis mandamus, quod homines de Manerio nostro de S. si id Maner. de antiquo Dominico Coronæ Angl. sit, ad Toloneum vobis, &c. juxta cons. præd. & Distinction. si, &c. In cuius, &c. Teste, &c.

And also the Tenants of ancient Demesne may have a writ directed to the Bailiffs, or Mayor, or others who will compell them to pay Toll, that they suffer them to go quit, &c. and the form of the writ is such :

Rex Ballivis A. de I. salutem. Cum secundum consuetudinem regni nostri hætenus obtentam & approbatam, homines & Tenentes de antiquo Dominico Coronæ Angliæ quieti sint & esse debent a præstatione Tolonei per totum regnum nostrum, vos nihilominus homines & Tenentes de Manerio de S. quod est de antiquo Dominico Coron. Angliæ, ut dic. ad Toloneum vobis de bon. & rebus suis in eadem Villa præstand. gravit. distringit. & ipsi ea occasione multipliciter inquietatis, minus juste, ad grave dampnum ipsorum hominum & Tenent. & contra cons. prædict. sicut ex querela sua accepimus ; & quis eisd. hominibus & Tenentibus injuriari nolumus in hac parte, vobis præcipimus, quod si ita est, tunc ab hujusmodi Distinctionibus & inquietationibus eisdem hominibus & tenentibus ea occasione de cætero inferend. desistentes, ipsos de hujusmodi Toloneo vobis de bonis & rebus suis prædict. in eadem Villa præstand. quietos esse permittatis, juxta consuet. prædict. & Distinctionem, si quam, &c.

And by the Writ aforesaid it doth appear, that Tenants in ancient Demesne shall be quitted of Toll, as well those Tenants who hold of the Manor which is ancient Demesne which is in the Seisin or the Possession of another man than of the King, as the Tenants of ancient Demesne which hold of the Manor in ancient Demesne which is in the King's hands and possession.

And it appeareth also that they shall be quit of Toll for their Goods and Chattels which they Merchandize with others, as well as for their other Goods ; for the Writ is general, *pro bonis & rebus suis.*

And it appeareth that that Writ may be sued by all the Tenants, as a Writ of *Monstraverunt* shall be sued ; and also that every particular Person who is grieved may sue forth the Writ if he will.

And also the Lord in ancient Demesne himself shall be as well

well acquitted of Toll throughout the Realm as the Tenants in ancient Demefn shall be; and that appeareth by the Register, of an Attachment sued by the Lord of the Manor in ancient Demefn against the Bailiffs of C. because they took Toll of him. And they shall not be only quit of Toll, but also of Pontage, Passage, and the like.

C And also they shall not be contributory to the Expences of the Knights in Parliament; and if the Sheriff will distrain them, or any of them, to be contributory for their Lands in ancient Demefn, then they may sue forth a writ directed to the Sheriff, that he do not compell them to be contributory to the expences of the Knights, &c. Commanding them in the same writ, that if they do distrain them, or any of them, that they re-deliver the Distress, &c. And the writ may be sued by all together, as a *Monstraverunt* shall be directed to the Sheriff, or by any of them who are so distrained.

D And Tenants at will within ancient Demefn shall be discharged of Toll as well as the free Tenants, or Tenants for term of life, or for term of years of Lands in ancient Demefn, shall be discharged of Toll for their Goods, &c.

E And see 7 H. 4. that a Tenant in ancient Demefn may Merchandize, buy and sell, and shall not pay Toll: and the same agreeth with the Register. But T. 9. H. 6. it is holden that they shall not pay Toll of things coming of their Tenements within ancient Demefn, nor for things bought for their sustenance, &c. but for other things it is a question: but forasmuch as they shall be quit of Pontage, Murage, and Passage, I conceive that they shall be quit of Toll generally, altho they do Merchandize with their Goods. And the Toll ought always to be paid by the Buyer, and not by the Seller: if it be not by some special Custom, &c.

19 H. 6. 66.
Newton.

F And the Villains of Lords who come to Parliament shall not be Contributaries to the Expences of the Knights of the Counties who come to the Parliament; But the Lords shall have Letters in their own names, directed to the Sheriff, commanding him that he do not distrain their Villains to be Contributory to those Expences of the Knights, and if he hath distrained them, to deliver the same to the said Villains.

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And it seemeth reasonable that the Villain may, if he will, sue the writ, as well as the Lord, &c. which writs do appear amongst the writs to be quit of Toll.

A And also Chaplains who are Masters of the Chancery, who are attendants at Parliaments, shall not be contributory by reason of their Benefices unto the Expences of Proctors

Writ of being quit of Toll.

Proctors made for the Clergy who come to the Parliament; and if they be, they shall have a Writ to the Archdeacon and his Officers, commanding them for to discharge them, and upon that they may have an *Alias*, and a *Pluries*, and Attachment against them; and the Writ is such:

Rex Archidiacono Midd. & ejus Offic. ac eorum Commissar. salut. Cum in Parlamento nostro apud Westmon. anno regni nostri quarto convocato, per Nos, & per Prælatos, Comites, Barones, & totum Concilium nostrum, ibidem concord. fuisset, quod Clerici nostri de Cancell. beneficiati, in Parliamentis, Consiliis & Tractatibus nostris, ad obsequendum nobis & populo regni nostri personaliter existent. ad contribuendum ration. Benefic. suorum expens. Procuratorum de Clero aliquarum Dioc. ad hujusmodi Parliamenta, Consilia & Tractatus de mandato nostro venientium, dum in eisd. præsentis forent, essent quieti: Nos Concordiam præd. illam in omnibus, maxime cum expens. præd. propter absentiam illorum qui dictis Parliamentis, &c. non interfuer. præstent. volentes observari, Vobis mandamus, quod T. Personam Eccles. de N. Lond. Dioc. qui Cleric. de Cancell. nostra est, & qui in Parlamento nostro apud Westmon. ultimo tento in obsequio nostro & communitat. populi regni nostri præsens fuit, ad contribuendum ratione Beneficii sui prædict. expens. Procuratorum qui ad dictum Parliamentum pro Clero dictæ Diocæs. vener. seu aliorum Procuratorum qui d. aalia Parliamenta, &c. per nos nunc tenenda venire conting. dum hujusmodi obsequiis intenderit, nullatenus compellat. seu per ministros vestros aliquatit. compelli permitt. sed ipsum de expens. hujusmodi quietum esse faciat. juxta Concordiam supradict.; & si quid ab eo ea occasione levatum fuerit, id ei sine dilatione restitui; necnon Processibus, si qui ad Censuras Ecclesiasticas contra ipsum ex causa præd. facti fuerint, supersederi, & sentent. si quæ, in ipsum fulminata fuerit, sine dilatione revocari faciatis. Teste &c.

Quere for that Statute: and by that appeareth, that the Parliament may bind the Clergy by the Acts and Statutes made in Parliament.

Writ de Libertatibus allocandis.

B **T**HE Writ de *Libertatibus allocandis* lieth where any Citizen or Burges, or other man, is impleaded before the Kings Justices, Justices Errant, or Justices of the Forest, and he claimeth and pleadeth any grant of Liberty made unto him by the King, or unto any City or Burrough whereof he is a Burges, and the Justices do delay to allow that Liberty; then he who is so delayed by the said Justices may sue forth such Writ directed to the Justices, commanding them to allow the same: and the Writ is such:

Rex Justiciar. suis de Banco salutem. Quia Burgens. nostri de N. per Chartas progenitor. nostror. quond. Regum Angl. clamant habere diversas Libertates, quibus ipsi & antecessores sui Burgens. ejusd. Ville a tempore consecutionis Chartarum præd. semper hætenus usi sunt & gavisi, sicut dicunt: Vobis mandam. quod ipsos Burgens. Libertat. præd. coram vobis in Banco uti & gaudere permittat. juxta tenorem Chartar. præd. prout eis uti & gaudere debent, ipsique & antecessores sui præd. Libertat. illis a tempore præd. semper hætenus rationabiliter uti & gaudere consueverunt. Teste, &c.

And if any do claim a special liberty to be impleaded within the City or Burrough, and not out of the City, then the Writ shall be special, thus:

Rex eisdem, &c. salutem. Cum inter ceteras Libertates quæ ad meliorationem Ville nostræ de R. per Chartas progenitor. nostror. quondam Regum Angl. concessæ sint Burgens. ejusd. Ville, concessum sit eisdem, quod ipsi non implacitent seu implacentur alibi quam infra Burgum præd. coram. &c. ejusd. Vill. de aliquibus tenur. intrinsicis, seu transgr. & contractibus infra eund. Burgum factis, prout in Chartis præd. plenius continet. qua quidem Libertate iidem Burghenses & antecessores sui ejusdem. Ville Burghens. a tempore consec. Chartar. præd. semper hæten. rationabiliter usi sunt sicut dicunt: Vobis mand. quod eosdem Burghenses Libertate præd. coram vobis uti & gaudere permittat. juxta tenor: Chartar. præd. prout ipsi eis uti debent, ipsique & antecessor. sui præd. a tempore præd. semper hætenus uti & gaudere consuever. Teste, &c.

And every one who claimeth any Liberty, and justifieth by the same any act done by him in any Court before any manner of Justice or Justices, and the Justices will not allow that liberty, or delay to allow the same, then he may sue forth that Writ. And those Writs are of several forms, as appeareth by the Register, and may be sued by

a Body corporate, or by any single Person, as the case shall happen, &c. And the Barons of the Cinque-ports may sue forth such Writs, if they be delayed to have their Liberties allowed unto them.

And the like Writ may be sued to the Justices of the Forest, commanding them to allow Charters granted to any Persons, to have Pasture, or to be quit of Pannage there.

Writ de Corrodio habendo.

So every
common
person, if he
be Founder,
and doth
not give in
Frank-al-
moigne:
44 E. 3.
24 & 50.
Ass. 6.

THE Writ de Corrodio habendo lieth where the King is the Founder in the right of his Crown of any Abby or Priory, or other Religious House. Now of common right the King ought for to have a Corrody, and a reasonable allowance for any of his Vadelets in the same House. And so of every Bishoprick in England or Wales, the King ought to have a reasonable Pension for his Chaplain, until the Bishop have promoted him to a convenient Benefice. And the form of the Writ for the Corrody is such:

Vid. 21. E. 4. 8. That the King writ for his Vadelet by his Prerogative, by which Br. collects, that a Founder common person shall not have a Corrody.

14 H. 6. 11. If the King found a Frank Chappel, he shall not have Corrody, nor Pension.

1 E. 4. 10.
the Writ
ought to
contain the
Kings Title
to the Cor-
rody.

Rex dilectis suis in Christo Priori & conventui de N. salut. Volentes dilecto Valedicto nostro de S. sibi de sustentatione congrua provideri, ipsum ad vos duximus transmittend. rogantes quatenus ipsum S. in Domum vestram præd. admittentes, ei talem sustentationem in omnibus qualem P. jam defunct. habuit dum vixit in ead. ministrari, & ei Literas vestras communi Sigill. Domus vestre signatas, mentionem de hiis que de ead. Domo vestra sic percipiet facientes, sibi super hoc fieri & ei liberari fac. pro quo nobis agend. Domui vestre præd. tener. volumus special. in futuro; & quid inde ad hunc rogatum nostrum duxeritis faciend. nobis rescribat. per præsent. portatorem, Teste, &c.

There is another form of Writ, where the King will write for the Servants of his Grandfather or Father, thus:

Rex eis d. &c. salutem. Attend. grata & laudabilia obsequia que dilect. serviens noster A. avo nostro & nobis hæcenus impend. volentes eid. A. cui de sustentat. sua per ipsos avum seu patrem nostrum aut nos nond. est provisum, de hujusmodi sustentatione providere, ut tenemur, ipsum ad vos duximus destinand. rogamus quaten. ipsum A. in Domum vestram præd. admitt. ei talem sit.

sent. & in victu & vestitu & al. necessariis qual. R. jam defunct. habuit ad mand. dicti avi nostri de dict. Domo vestra percipiend. ministretis, sibi que Literas vestras patent. &c. ut supra.

And so where the King is Founder of any Abby or Priory of Nuns, the King shall have a Corrodie for the Queens Maidens, or others of her Cousins, for whom he pleaseth for to write, &c. But if the King will write unto an Abby of Monks, for a Maiden to have a Corrodie there for her sustenance, &c. it seems the same shall not be obeyed, for the inconvenience thereof, nor contrary, if he write to a Nunnery for his Vadelet, there : *Tamen quare.*

There is another form of Writ thus :

Rex dilectis & fidelibus suis Abbati & Conventui de B. salutem. Volentes de gratia nostra speciali dilecto Vadeletto nostro R. pretextu boni servitii sui nobis impensi & impendend. cui de sustentat. congrua, &c. ut supra.

And upon these Writs, if the Abbat or Prior will not do according as he is directed to do by the Writ, an *Alias* and a *Pluries* shall be awarded, *vel causam nobis significes*, shall be in the Writ of *Pluries*, and shall be returned unto the King's Bench ; and if he do not return the same, an Attachment shall be awarded against the Abbat, Prior, or Prioresse.

And if the King write for such a Corrodie unto an Abby or Priory, and they grant parcel of the Corrodie unto him for whom the King writeth, but not all, nor so much as others had before ; then the King, upon a surmise thereof made in the Chancery, shall grant a Writ of *Sicut alias*, directed unto the said Abbat or Prior, &c. desiring them that they grant the like Livelihood in all things as any other hath had before in the same House. And if the Abbat or Prior upon the *Pluries* return any matter of excuse, wherefore he ought not to grant such Corrodie, which return seemeth unto the Court where the Return is made, be it in the Chancery or in the King's Bench, to be no sufficient Return, then the King shall grant such Writ :

Rex

Note, If an Abby which a Canon person hath cometh to the King by Escheat ; yet he shall not have a Corrod. because it is not of his foundation. L. 5 E. 5. 118. *Br. Corrod.* 16. Yet the King may have a Corrodie where he is not Founder, but that is by special Grant. 1 E. 4. 10.

38 E. 3. *Br. Contemp.* 5. & 39 H. 6. 48. If the Abbat will not admit the King's Vadelet, he who ought to be admitted shall recover damages, and not the King, for that the King hath only the Presentation to the Corrodie, and the party the damages.

44 E. 3. 25. *per Knevit*, if the King and another give Land to erect, &c. the King is Founder.

22 E. 4. 17, 18, 19. *Hussey and Fairfax*. If an Abbat grant to A. to have a Corrodie, *nihil operatur* by the Grant ; but if he grant Corrodie, or so much Bread and Ale, &c. it is a good Grant of those things, but it is no Corrodie, but a profit ; for every Corrodie hath his beginning by the Foundership.

Rex, &c. salut. Cum nuper volentes dilecto nobis N. prætectu diutini servic. sui Dom Ed. nuper Reg. arvo nostro & nobis hæc ten. impens. de sustentat. congrua providere, ipsum ad vos miserimus, & vobis plur. mandaver. rogantes quatenus eund. N. in Domum vestram admitteretis, & ei talem sustentation, &c. concederetis, & Literas, &c. faceret. vel causam nobis significaretis, quare mandat. nostris toties vobis inde direct. minime parvultis; ac vos quasd. causas excusat. nobis in Canc. nostram miseritis quas insufficient. reputavim. Vobis igitur mandam. firmiter injungentes, quatenus eund. N. in domum vestram, &c.

[231] And if an Abbat or Prior at the King's request do grant a Corrodie to B. for life, and afterwards B. will surrender the Grant of his Corrodie unto the Abbat or Prior, to the intent that C. have the same for his life, then he ought for to sue a Writ to the Abbat or Prior thus :

Rex dilectis sibi, &c. Priori & Conventui de R. salutem. Cum dilectus nobis S. quandam certam sustentationem in Prioratu vestro præd. ad rogatum nostrum obtinet, & in voluntat. existat quod dilect. Vadelictus noster N. habeat totum statum quem idem S. habet in sustentatione prædict. & ad illum effectum S. Literas patentes sibi de dicta sustentatione per vos factas vobis restituere sit paratus, sicut dicit, supplicans nobis ut assensum nostrum ad hoc præbere dignemur: Nos supplicationi illius S. innuentes, & insuper volentes præf. N. gratiam uberiorem facere in hac parte, Vobis mandam. rogantes, quod si idem S. dictas Literas ad effectum præd. restituere voluerit, tunc receptis penes vos Literis illis, ipsum N. in Domum vestram præd. admittentes, ei sustentat. præd. ad totam vitam ipsius N. de dicta Domo vestra percipiend. concedat. eique Literas vestras patentes ad ead. sustent. sub sigill. Domus vestre præd. fieri & ei deliberari fac; & quod ad hunc rogatum nostrum duxeritis faciend. nobis rescribat. per præsent. portatorem. Teste, &c.

19 E. 3.

Fines 50. A.

Fine was

levied of a

Corrodie.

10 Ass. II.

Br. Corrodia

& Nuper obiit

of a Corrodie, and dec. de libero tenem. quod vid. 14 H. 6. 11. and 12. Assise licet of a Corrodie, contrary of a Pension.

And upon that he shall have an *Alias*, and a *Pluries*, and Attachment, if need be.

And if an Abbat or a Prior admit one to a Corrodie, upon the King's Writ sent him, if he dieth who is so admitted, the King may write for another to have the same Corrodie.

But if the King have a Pension in any Abby or Priory for his Chaplain, if the Abbat or Prior upon the King's Letter grant a Pension to his Chaplain, and the Chaplain dieth,

dieth, the King cannot write for or grant a new Pension unto another Chaplain during the said King's life; and if he do, the Prior is not bound to grant the same: but it is otherwise of a Corrodie. 14 H. 6.
11 and 12.

And yet some say, that upon the Cession of an Abbat or Prior, the King shall have a new Pension granted to his Chaplain; but *Quere* of that. 14 H. 6. 12.

C And if the King have a Corrodie in an Abbey or Priory to have certain Bread, and certain Gallons of Beer, &c. the King may grant the same to several men: but where he hath a Corrodie to have livelyhood of one man, to sit with the Servants of the Abbat, there he cannot grant the same but to one man only. And the King may release to the Abbat or Prior his Title to the Corrodie, if he will. 8 E. 4. 17. ac.
14 H. 6.
11 and 12.

E And if the Abbat or Prior do receive one to a Corrodie upon the King's Letter, and thereupon doth make him a Grant thereof; thereby the Abbat or Prior and their Successors shall be bound for ever. Otherwise it seemeth if the Abbat had granted the same upon the King's request.

F And T. 4. E. 3. it is holden, that the Abbat or Prior who holdeth of the King in *Frankalmoine* shall not be chargeable with any Corrodie. 50 Aff. 6.
44 E. 3. 24.
ac.

Writ de Annua Pensione.

G **A**ND when the King hath a yearly Pension out of an Abbey or Priory for his Chaplain the King shall send his Writ unto the Abbat or Prior, &c. to grant the said Pension to his Chaplain; and the Writ shall be such:

Rex dilectis in Christo Abbati & Conventui de C. salutem. Cum vos ratione nova creationis vestre pref. Abbat. teneamini uni de Clericis nostris, quem vobis duxerimus nominand. in quadam Annua Pensione de Domo vestra percipiend., quousque sibi provisum sit de Beneficio Ecclesiastico competent; ac nos promotionem dilecti Clerici nostri a suis exigent. meritis affectantes, ipsum ad hujusmodi Pensionem a vobis percipiend. duxerimus nominand.; Vobis igitur mandamus, quatenus eidem A. talem Pensionem de dicta Domo vestra in forma pred. percipiend., que dantes deceat, percipientemque fortius obligatum reddere debeat, concedatis, Literas vestras dat. sigill Capituli vestri signat. eidem A. super hoc fieri facient. Et quod inde duxer. faciend. nobis sine dilat. rescribat. Teste, &c.

And the form of the Grant of the Pension is such :

Univerſis ad quos præſentes Literæ pervenerint Abbas de T. H
& Conventus ejusd. loci ſalut', &c. Noveritis nos, ad inſtanti-
am Illuſtriſſimi Principis Ed. Dei gratia Reg. Angl', dediffe &
conceſſiſſe dilecto nobis in Chriſto A. Clerico. centum ſolidos ſter-
lingorum in Feſto S. Mich. annuatim de Camera noſtra percipi-
end', quosque eid. A. de Beneficio Eccleſiaſtico competenti ſibi per
nos fuerit proviſum & hoc ei quam citius facultas ſe obtulerit
facere. promittimus. Diſt. autem A. per ſe, vel ſuum Procur.
legit. ad hoc conſtitus', diſtas v. l. ſingulis annis apud S. recipiat.
In cujus, &c. commun. ſigill. Domus noſtræ duximus apponend'.
Dat' in Capitulo noſtro, &c.

And it appeareth by an ancient Roll in the Exchequer, of
what Abbies or Priories the King ought to have a Corrody
and Pension, and of what a Pension onely, and what a Cor-
rody only ; the Copy of which followeth.

*The Names of the Corrodiæ's and Pensions in
England which are of the King's Gift, ac-
cording to the Book in the Exchequer.*

IN the Abbey of <i>Glaſſenbu-</i>	In the Abbey of <i>Aide</i> , 1. C.
ry, 1. C. 1. P.	1. P.
In the Abbey of <i>Mochelny</i> ,	In the Abbey of <i>Battel</i> , 1. C.
2. C. 1. P.	1. P.
In the Abbey of <i>Tewksbury</i> ,	In the Abbey of <i>Waverly</i> ,
1. C.	1. C.
In the Abbey of <i>Clrve</i> , 1. C.	In the Abbey of <i>Malmsbury</i> ,
1. P.	2. C. 1. P.
In the Abbey of <i>Ford</i> , 1. C.	In the Abbey of <i>Sleveborn</i> ,
In the Abbey of <i>Backfaſt</i> ,	1. P.
1. C.	In the Abbey of <i>Southwick</i> ,
In the Abbey of <i>Sherburn</i> ,	1. C. 1. P.
1. C. 1. P.	In the Abbey of <i>Suſeſter</i> ,
In the Abbey of <i>Abbatsbury</i> ,	2. C. 1. P.
1. C. 1. P.	In the Abbey of <i>Stonley</i> ,
In the Abbey of <i>Bewly</i> , 1. C.	1. C.
1. P.	In the Abbey of <i>Briſtok'm</i> ,
In the Abbey of <i>Shatſbury</i> ,	1. P.
1. P.	In the Abbey of <i>Hurtey</i> ,
[232] In the Abbey of <i>Winton</i> , 1. C.	1. C.
1. P.	In the Abbey of <i>Reading</i> ,
In the Abbey of <i>Wormel</i> , 1. P.	1. C. 1. P.
	In

In the Abbey of <i>Messenden</i> , 1. C.	In the Abbey of <i>Tetfurih</i> , 1. C. 1. P.
In the Abbey of <i>Gloucester</i> , 2. C. 1. P.	In the Abbey of <i>Pipwel</i> , 1. C. 1. P.
In the Abbey of <i>Langton</i> , 1. P.	In the Abbey of <i>Leicest</i> , 1. C.
In the Abbey of <i>Evesham</i> , 1. C. 1. P.	In the Abbey of <i>Newsted</i> , 1. C.
In the Abbey of <i>Pershore</i> , 1. C. 1. P.	In the Abbey of <i>Pomsfret</i> , 1. C. 1. P.
In the Abbey of <i>Winchcomb</i> , 1. C. 1. P.	In the Abbey of <i>Worstore</i> , 1. C.
In the Abbey of <i>Osney</i> , 1. C.	In the Abbey of <i>Blith</i> , 1. C.
1. P.	In the Abbey of <i>Waltham</i> , 2. C. 1. P.
In the Abbey of <i>Tame</i> , 1. C.	In the Abbey of <i>Barking</i> , 1. C.
In the Abbey of <i>Dorchester</i> , 1. C. 1. P.	In the Abbey of <i>Towerhill</i> , 1. C.
In the Abbey of <i>Abingdon</i> , 2. C. 1. P.	In the Abbey of <i>Bermondsey</i> , 1. C.
In the Abbey of <i>Evesham</i> , 1. C. 1. P.	In the Abbey of <i>Christchurch-</i> <i>land</i> , 1. C. 1. P.
In the Abbey of <i>Godslow</i> , 1. P.	In the Abbey of <i>Eversham</i> , 1. C.
In the Abbey of <i>Notley</i> , 1. C.	In the Abbey of <i>Chirsey</i> , 1. C.
In the Abbey of <i>Southamp</i> , 1. C. 1. P.	In the Abbey of <i>St. Mary</i> <i>in York</i> , 1. C.
In the Abbey of <i>Lilfil</i> , 1. C.	In the Abbey of <i>Durham</i> , 1. C.
In the Abbey of <i>Shrewsbury</i> , 1. C. 1. P.	1. P.
In the Abbey of <i>Chester</i> , 1. C.	In the Abbey of <i>Tinmouth</i> , 1. P.
1. P.	In the Abbey of <i>Wisby</i> , 1. C.
In the Abbey of <i>Valerial</i> , 1. C.	1. P.
In the Abbey of <i>Burton</i> , 1. C.	In the Abbey of <i>Mewes</i> , 1. C.
1. P.	In the Abbey of <i>Altney</i> , 1. C.
In the Abbey of <i>Thorney</i> , 1. C.	1. P.
1. P.	In the Abbey of <i>Wardon</i> , 1. C.
In the Abbey of <i>Ramsay</i> , 1. C.	In the Abbey of <i>Christon</i> , 1. C.
1. P.	In the Abbey of <i>Sciby</i> , 1. C.
In the Abbey of <i>Peterborough</i> , 1. C. 1. P.	In the Abbey of <i>Sparhall</i> , 1. C.
In the Abbey of <i>Crowland</i> , 1. C. 1. P.	In the Abbey of <i>Dorsey</i> , 1. C.
In the Abbey of <i>S. Benedict</i> <i>in Norfolk</i> , 1. C. 1. P.	In the Abbey of <i>Spalding</i> , 1. C.
In the Abbey of <i>Bury</i> , 1. C. 1. P.	1. C.

In the Abbey of <i>S. Augustine</i> in <i>Canterbury</i> , 1. C. 1. P.	In the Priory of <i>Worcester</i> , 1. C.
In the Abbey of <i>Thornton</i> , 1. C. 1. P.	In the Priory of <i>Sedsworth</i> , 1. C. 1. P.
In the Abbey of <i>Tweerdart</i> , 1. C.	In the Priory of <i>Dunstable</i> , 1. C. 1. P.
In the Abbey of <i>Novington</i> , 1. P.	In the Priory of <i>Royston</i> , 1. C.
In the Abbey of <i>Cotesshall</i> , 1. C.	In the Abbey of <i>Kennelworth</i> , 1. C. 1. P.
In the Abbey of <i>Monmouth</i> , 1. C.	In the Priory of <i>Coventry</i> , 1. C.
In the Abbey of <i>Westminster</i> , 1. P.	In the Priory of <i>Tisbury</i> , 1. C.
In the Abbey of <i>S. Saviour's</i> , in <i>Canterbury</i> , 1. C. 1. P.	In the Priory of <i>Ely</i> , 1. C.
In the Abbey of <i>Derentry</i> , 1. C.	In the Priory of <i>Bedwell</i> , 1. C.
In the Abbey of <i>Cristall</i> , 1. C.	In the Priory of <i>Norwich</i> , 1. C. 1. P.
In the Abbey of <i>Straisford</i> , 1. C.	In the Priory of <i>Lenton</i> , 1. P.
In the Abbey of <i>Milton</i> , 2. C.	In the Priory of <i>Sesword</i> , 1. C.
In the Abbey of <i>Serne</i> , 1. C.	In the Priory of <i>Merton</i> , 1. C. 1. P.
In the Abbey of <i>Combe</i> , 1. C.	In the Priory of <i>Lewes</i> , 1. C.
In the Abbey of <i>Grenuby</i> , 1. P.	In the Priory of <i>Wenlock</i> , 1. C.
In the Abbey of <i>Merival</i> , 1. C. 1. P.	In the Priory of <i>Winchester</i> , 1. C. 1. P.
In the Priory of <i>Bath</i> , 1. C.	In the Priory of <i>Bordfly</i> , 1. C.
In the Priory of <i>Montagu</i> , 1. C.	In the Priory of <i>Standeate</i> , 1. C.
In the Priory of <i>Tavestock</i> , 1. C.	In the Priory of <i>S. Andrews</i> in <i>Northampton</i> . 1. C. 1. P.
In the Priory of <i>S. Augustine</i> in <i>Bristol</i> , 2. C. 1. P.	In the Abbey of <i>Bodman</i> in <i>Cornwall</i> . 1. C.
In the Priory of <i>Almsbury</i> , 1. C.	In the Abbey of <i>S. James's</i> in <i>Northampton</i> . 1. C. 1. P.
In the Priory of <i>Stetborne</i> , 1. C.	
In the Priory of <i>Bradflow</i> , 1. P.	

Writ de Idiota inquirendo & examinando.

A **N**Ote, that the King by the Law of right is for to defend his Subjects, their Goods and Chattels, Lands and Tenements; and therefore in the Law every loyal Subject is taken into the King's Protection; and if he be put out of the King's Protection for his Offence, then every man may do to him as against the King's Enemy, and he hath no remedy for the same by the King's Laws. And because that every man is within the King's Protection, an Idiot, who cannot defend or govern himself, nor order his Lands, Tenements, Goods, nor Chattels; the King of right ought for to have him in his custody, and to rule him and his Lands and Tenements, Goods and Chattels; and that appeareth by the Statute of *Prærogativa Regis*, cap. 8.

B And therefore when the King is informed, that one who hath Lands or Tenements is an Idiot, and is a natural from his birth, the King may award his Writ to the Escheator of the County where such Idiot is, or unto the Sheriff, to enquire thereof; and the Writ which shall be directed to the Escheator shall be such:

Stamford
34. 18 E. 3.
Scire fac. 10.

Rex Escheatori suo, &c. salutem. Quia accepimus quod I. de B. Fatuus & Idiota existit, ita quod regimini sui ipsius, terrarum, tenementorum, bonorum & catallorum suorum non sufficit, & quod ipse in fatuitate sua magnam partem terrar. & tenement. suorum alienavit, & etiam magnam partem bonorum & catallorum suorum dissipavit, in exhered. suam, & nostri præjudic. manifestum: Nos indemnitati ipsius in hac parte prospicere volentes, vobis mandamus, quod ad ipsum I. in propria persona vestra accedatis, & ipsum viis & modis quibus super statu suo melius poteritis informari circumspicte examinatis, & nihilominus per sacramentum proborum & legalium hominum de Ball. vestra, per quos rei veritas melius sciri poterit, diligenter inquiret, si idem I. Fatuus & Idiota sit, sicut præd. est, necne: & si sit, tunc utrum a natiuitate sua, an ab alio tempore; & si ab alio tempore, tunc a quo tempore, & qualiter, & quomodo; & si lucid. gaudeat intervallis; & si id. I. in eod. statu existens terras aut tenementa aliqua alienavit, necne; & si sic, tunc quas terras & que tenementa, & ubi, & cui vel quibus, & in cuius vel in quor. manib. ter. & tenementa sic alienat. existunt, & qualiter, & quomodo, & que terr. & que tenementa sic adhuc remanent, & de quo vel de quibus tam terr. & tenem. sic alien. quam terr. & tene-

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Writ de Idiota inquirendo & examinando.

menta sibi retenta, teneant', & per quod servit', & qualis', & quomodo, & quantam valeant per an. in omnibus exitibus, & quis propinquior her. ejus sit, & cujus etatis. Et inquisit. inde distinte & aperte fact. nobis in Canc. nostram sub sigillo vestro & sigillis eorum per quos, &c. mittat, & hoc breve. Teste, &c.

And there are two other manners of Writs of another form in the Register, which are directed unto the Escheator, to go to such Idiot, and to examine him, and to enquire thereupon: And the form of the Writ which is directed unto the Sheriff for to enquire of an Idiot is such:

Rex Vic', &c. Pracip. tibi, quod per sacram', &c. diligent. inquiras utrum I. de B. frat. & heres T. de B. a natavit. sua tempore semper hactenus purus Idiotia extiterit, per quod custodia terrar. & ten'orum suorum in C. ad nos debeat pertinere, an per Infortunium vel alio modo in hujusm. infirmitat. postea inciderit, propter quod hujusmodi custod. ad nos pertiner. non debeant; & si per Infortunium vel alio modo, tunc per quod infortunium, & quali, & quo modo, & cujus etatis fuerit, & de quo terra & tenementa immediate tenet, & per quod servit', & quis modo ea teneat, & quant. valeant per ann. in omnibus exit', & quis medio tempore exit. eorum percepit. & inquisit. inde distinte & aperte, &c.

And there is a form of Writ directed to the Sheriff, for to enquire of Idiots, which is much of the like form as the first Writ above is; and it is directed to the Escheator to make the enquiry.

And although a man be found Idiot by Inquisition taken before the Escheator, or before the Sheriff, and by their Examination, &c. and that be returned into the Chancery; yet he who is so found Idiot may in person, or by his friends, come into the Chancery before the Chancellor and the King's Council, and shew the matter, and pray that he may be examined before the Chancellor and the King's Council, whether he be Idiot or not: or he may sue forth a Writ out of the Chancery to certain persons, to bring him who is so found Idiot before the King and his Council to *Westminster*, to be there examined; and if he be brought thither and examined, and found to be no Idiot, then the Inquisition found before the Escheator, or Sheriff, and also the Examination which the Sheriff hath made, and returned thereupon, shall be of no effect, but the same Office shall be taken as void, without any other traverse, as it seemeth. And the Writ which shall be directed to the party to bring the Idiot before the King's Council shall be such:

Rex I. de T. sal. Quia datum est nobis intelligi, quod R. frater tuus, filius & her. B. defuncti patris tui, Idiota est, & non sana mentis existit ita quod regimini sui ipsius aut terrarum suarum providere non sufficit; Nos, volentes de statu præd. R. fratris tui certiorari, tibi præcipimus, firmiter injungentes, quod statim visis præsent', præd. R. in custodia tua existent', ut dic', coram nobis & Concilio nostro apud Westm. sine dilatione duci fac', ita quod sit ibidem hac instante die Jovis, ibid. coram eod. Concilio nostro examinand', & ad faciend' de eo quod per advisamentum Concilii nostri super hoc duxerimus ordinand'. Et hoc sub pena centum librarum nullatenus omittas. Teste, &c.

B And he who shall be said to be a Sot and Idiot from his birth, is such a person who cannot accompt or number twenty pence, nor can tell who was his Father, or Mother, nor how old he is, &c. so as it may appear that he hath no understanding of reason what shall be for his profit or what for his loss: But if he have such understanding that he know and understand his letters, and do read by teaching or information of another Man, then it seemeth he is not a Sot, nor a natural Idiot.

Writ de Apostata capiend.

C THE Writ de Apostata capiend' lieth where a man doth enter into Religion, and is professed, and afterwards he leaveth his house, and is vagrant, and running about the Countrey, against the Rules of his Order of Religion; then the Abbat or Prior where he is professed may certifie the same under his Seal into the Chancery, and pray to have a Writ to the Sheriff to apprehend him, and deliver him to the Abbat or his Attorney; and the form is such:

Rex Vic', &c. salut'. Quia frat. I. Canonicus de A. spreto Habitu Ordinis illius, in Habitu seculari de patria in patriam in Balliva tua vagatur & discurrit, in anime sue periculum & ordinis sui scandalum manifestum, sicut dilect. nobis Abbas de A. nobis significavit per Literas suas patentes; Tibi præcipimus, quod præf. I. ubicunque in Ball. tua inveniri contigerit, sine dilatione arrestes, & præd. Abbati, vel ejus in hac parte Attorn', liberes, secund. Regulam Ordinis præd. castigand'. Teste, &c.

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A And upon that he may have an Alias and Pluries against the Sheriff, and an Attachment, if he will not execute the Writ.

B There is another Writ of another form thus:

Writ de Leproso amovendo.

Rex eidem, &c. salutem. Quia frat. T. Monachus de S. Ordinis Clunassen, In Ordine illo professus, (preto Habitu Ordinis illius, &c. sicut dilectus nobis in Christo Abbas de B. per Literas suas patens, nobis significat; Tibi præ, quod præf. &c. ut supra.

And it seemeth, that although he who departeth from his House or Religion doth not change his Habit, yet if he be Vagrant, &c. and the Abbat of the House do certifie the same, he shall have such Writ, notwithstanding these words in the Writ (*preto Habitu, &c.*) for those are but words of form, and not of substance; for the Habit of Religion is the Obedience and Profession which he hath made to such Rule, &c. and if he relinquish that Obedience, and the Rules of that Religion, and departeth, it seemeth that he doth relinquish the Habit: and if that departure be certified by any Abbat where such Person was remaining, and under his Obedience when he departed and relinquished his Religion, the same is sufficient to have such Writ upon such Certificate; or if it be certified by him who is the Visitor of the Religious House, &c. But there are not any Writs in the Register framed upon such Certificate made by any Visitor or Abbat of any other House, upon which the party who left his Habit was not remaining at the time, and therefore *Quere* of the same.

Writ de Leproso amovendo.

THE Writ *de Leproso amovendo* lieth where a man is a Lazer or a Leper, and is dwelling in any Town, and he will come into the Church, or amongst his Neighbours where they are assembled, to talk with them, to their annoyance and disturbance; then he or they may sue forth that Writ for to remove him from their company, and the Writ is such:

Rex Vic, vel Majori & Vic. Lond. sal. Quia accepimus quod I. de N. leprof. existit, & inter homines Civitatis prædictæ. communit. conversatur, & cum eis tam in locis publicis quam privatis communicat; & se ad locum solitarium, prout moris est, & ad ipsum pertinet, transferri recusat, ad grave damnum hominum prædictæ, & propter contagionem morbi prædictæ. periculum manifest; Nos huiusmodi periculo, prout ad nos pertinet, præcaver, & super præmiss. quod iustum est & iustat. fieri volentes, vobis præcipim, quod assumptis vobiscum aliquibus discretis & legalibus hominib. de Civitat. prædictæ. non suspect, qui de persona præf. I. de N. & huiusm. morbo notitiam habent meliorem, ad ipsum I. accedatis, & ipsum in præsentia prædictæ.

præd. hominum faciatis dirigent. videri & examinari; & si ipsum Leprosum esse inveneritis, ut prædictum est, tunc ipsum honestiori mod. quo poteritis a communicatione præd. hominum amoveri, & se ad locum solitarium ad habitand ibid. prout moris est, transferri faciatis indilat. ne per hujusmodi commun. conversationem suam hominibus præd. dampn. vel periculum eveniat quoquo modo. Teste, &c.

F And upon that he may have an *Alias* and a *Pluries*, and Attachment against the Mayor, or against him to whom the Writ is directed, if he will not execute the Writ.

G But it seemeth, if a man be a Leper or a Lazer, and will keep himself within his House, and will not converse with his Neighbours, that then he shall not be moved out of his House. But there are divers manners of Lepers; but it seemeth that the Writ is for those Lepers who appear to the sight of all men that they are Lepers by their Voice, and their Sores, and the Putrefaction of their Flesh, and by the smell of them: But for those who are infected with that Disease in their Bodies, and it doth not appear outwardly upon their Bodies, *Quare*, whether such Writ lieth for to remove them.

Writ De deonerando pro rata portione.

H **T**HE Writ *De deonerando pro rata portione* lieth where a man holdeth ten Oxgangs of Lands by Fealty, and 20 s. Rent of the King, and the Tenant doth alien one part, or one Oxgang, to one man, and another Oxgang to another man in Fee, and so to others the rest of the Oxgangs, and the Sheriff or the King's Officer will distrain one of the said Tenants for the whole Rent; then he who is distrained may sue forth that Writ, which is thus:

Rex Vic', &c. salutem. Monstraverunt nobis I. A. & W. quod cum quatuor bovati. terre cum pertin. in E. quæ fuer. B. & quæ de nobis tenentur per servitium tresdecim solid. per annum, reddendorum per manus Vic. nostri Com. præd. qui pro tempore fuerit, ad manus præd. I. A. & W. necnon ad manus T. ex perquisito suo devenerunt; & licet iidem I. A. & W. duas bovati. terre inde tantummodo teneant, tu tamen prædict. tresdecim solid. annuos a præf. I. A. & W. omisso præf. T. qui dictas duas bovatas terre residuas tenet, exigis, & ipsos I. A. & W. pro præd. tresdecim solidis annuis nobis reddend. per varias Distractiones compellis, in ipsor. I. A. & W. dispendium non modicum & gravamen, super quo nobis supplicaver. eis congruum remedium adhiberi. Et quia eisdem

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I. A. & W. injuriari nolumus in hac parte, tibi precipimus, quod si inquisit. super præmiss. faciend. vel alio modo legitimo, tibi constare poterit præd. quatuor bovatas terr. per servitium tresdecim solidorum de nobis tantummodo teneri, & ipsos I. A. & W. duas bovatas terre inde, & præd. T. alias duas bovatas terre residuas tenere, ut est dictum, tunc acceptis a præf. I. A. & W. iis que ad nos pertinent pro rata portione tenuræ suæ quam inde tenent, ipsos de residuo servic. præd. quietos esse permittas. Proviso semper, quod dict. residuum servitii illius a præf. T. ad opus nostrum levet, ut est justum. Teste, &c.

Br. Appar.
count 21.

29 H. 8. f.
28. Perkins
129.

And it appeareth by that Writ, that notwithstanding the Statute of *Quia emptores terrarum*, that if the King's Tenant do alien part of the Lands held of the King, yet the King or his Minister may distrain one of the Tenants for the whole Rent, &c. although that the Statute saith, *quod feoffatus tenent pro particula illa*, &c. But it seemeth the King is not bound by the Statute, but a common person is. For if a man hold 20 Acres of Land by Fealty, and 20 s. Rent of another man, and he alieneth one Acre to one in Fee, and another Acre to another in Fee, the Lord shall not distrain the Alienee but for the rate and value of the Land which he hath purchased, and shall not distrain one Alienee for the whole Rent, &c. But if the King's Tenant doth alien part of the Lands which he holdeth of the King without Licence, then the King may chuse whether he will take the Alienee for his Tenant or not, and then it is a question whether the Alienee shall have such Writ, but if the Alienee doth pay a Fine to the King for the Alienation, it is reason that he have such Writ as before, if he be distrained for the whole Rent which issueth out of all the Lands, whereof he hath purchased but part, &c.

And the like Writ as before is awarded to the Queen's Officers, where they distrain one Tenant for the whole Rent, where he holdeth but part of the Lands, and several other Tenants hold the residue thereof.

Br. Appar.
count 21.

29 H. 8.
f. 28.

And if a man who holdeth 100 Acres of Land, ought by his Tenure thereof to repair such a Bridge, if he alien in Fee 20 Acres to one, and 20 Acres to another, and one of them only be distrained to make the Reparations upon a Presentment found; he shall have a special Writ to the King's Officers, that they do not distrain him, but according to the rate of his proportion of the Land which he holdeth. And the Writ is such:

Rex dilectis & fidelibus suis I. de T. & sociis suis Just. nostris ad inquirend. de defectibus magni Pontis Canc. & ad defectus

defectus illos reparari & emendari faciend. assignatis, salutem. Ex parte R. nobis gravit, conquerent. est monstratum, quod cum presentat. sit coram vobis, quod idem R. tenet quatuor hid. terr. cum pertin. in D. in Com. præd. que de reparatione Pontis præd. ab antiquo onerari consuever. or thus, que ad reparation. Pontis præd. teneri asserentur; & licet ipse nisi tantum xx. acras terræ de dictis quatuor hid. terræ, & quidam alii totum resid. eorundem quatuor hidar. teneant; vos tamen, occasione. Presentac. præd. septem libras, ad quos dictæ quatuor hide terræ pro reparatione Pontis prædict. appportionat. sunt, de eod. R. ac si ipse quatuor bidas terr. præd. integre tenuerit. cum non teneat, omisiss aliis Tenentibus prædict. levar. nitimini, & ipsum ea occasione gravit. distringi & multipliciter inquietari faciatis, in ipsius R. grave dampnum, & status sui depression. manifestam, super quo nobis supplicavit de remedio provider. Et quia ipsum R. in hac parte indebit. nolumus onerari, vobis mandamus, quod si per inquisition. inde in præsent. ipsius R. si interesse voluerit, capiendam, vel alio modo legitimo, vobis constare poterit ipsum R. nisi xx. acr. dictar. quatuor hidarum terræ tantummodo tenere, & resid. earund. quatuor hidarum terræ in manibus aliorum Tenentium existet, ut est dictum, tunc dictas septem libras, ad quas dict. quatuor hide terræ pro reparatione Pontis prædict. sic assessæ sunt, tam de præf. R. quam de aliis Tenentibus prædict. viz. de quolibet eorund. juxta ratam tenuræ suæ earund. quatuor. hidar. terræ, nemini in hac parte parcend, nec aliquam Tenent. earund. ultra ratam tenuræ suæ indebite onerand. levar. fac. Present. præd. non obstante. Et si quid ab eodem R. ultra portionem tenuræ suæ minus iuste levatum fuerit, id ei sine dilatione restitui fac. Teste, &c.

C There is another form of Writ for the King's Tenant, where he is distrained for all the Rent, where he holdeth but part of the Lands out of which the Rent ought to be paid: which see in the Register.

But look the Statute of 34 Edw. 3. cap. 15. That if the King's Tenant in Capite alieneth his Lands in Fee without Licence, the Alienation shall not bind the King, but that he shall have his Prerogative of those Lands and Tenements: and therefore Quære the meaning of that Statute, and what is intended thereby.

Writ of Superseas.

[236] **T**HE Writ of *Superseas* lieth in divers cases: As if a man be sued, and a *Capias* or *Exigent* be awarded against him, he may by his friend sue forth a *Superseas* out of the place where the *Capias* or *Exigent* was awarded against him: or out of the Term he may sue forth a *Superseas* out of the Chancery directed to the Sheriff, that he take Sureties of him, &c. to appear at the day, &c. and that he let him at liberty: or he may find Sureties in the Chancery to appear at the day of the Return of the *Capias* or *Exigent*; and upon this he shall have a *Superseas* to the Sheriff, that he let him go, if he have arrested him thereupon; and if he have not arrested him, that then he do not arrest him, but suffer him to go in peace. And the form of the Writ is such:

Rex Vic', &c. Cum A. implacitet coram nobis per Breve nostrum B. & quosdam alios in dicto Brevi nostro contentos, de quadam transgress. eidem A. per prefat. B. & alios predict. illato, ut dicitur, ac idem B. pro eo quod non venit coram nobis ad respondend. prefat. A. de transgressione predict. in Exigend. in Com. tuo positus sit ad utlagand', ipso de Exigend. predict. penitus ignorante, unde nobis supplicavit, ut, cum ipse paratus sit super premiss. in omnibus stare juri, velimus ei in hac parte subvenire: Nos, Supplicationi predict. quatenus justum fuerit annuentes, tibi precipimus, quod si predict. B. in Com. tuo personaliter accedens se reddiderit Prisonæ nostræ, ut est moris, tunc Exigend. præd. Superseas; & postmod. si idem B. invenerit, tibi sufficientes Manuceptores, qui eum manucapient habere coram nobis ad talem diem quo Breve nostrum de Exigend. predict. coram nobis est retornabile, ad respondendum præf. A. de transgr. predict. & ad faciendum ulterius & recipiendum quod Curia nostra considerabit in premiss. tunc præf. B. a Prisona predict. (si ea occasione & non alia, detineatur in eadem) interim deliberari fac. per Manuceptionem præd. & habeas ibi nomina Manucept. præd. & hoc Breve.

And when he findeth Sureties in the Chancery for to appear at the day of the Return of the *Exigent*, then he shall have a *Superseas* of another form, which shall be such:

Rex Vic', &c. Supplicavit nobis C. quod cum B. implacitet coram nobis per Breve nostrum præfat. C. & quosdam alios de quadam transgr. eidem B. per præf. C. & alios predict. illata,

ut dicit. & licet idem C. paratus ſit præf. B. de transgr. præd. ſi quæ fuerit, respondere, & tu omnibus stare jur. secundum Legem & consuetudinem regni nostri Angliæ, ipse tamen, pro eo quod tu coram nobis retornasti, quod idem C. non fuit inventus in Ball. tua, juxta Processum inde coram nobis habitum, per te in Exigend. positus exiſtit in Com. tuo ad utlagand; velimus ejus indemnitati in hac parte providere. Nos, pro eo quod W. R. & I. manuceper. coram nobis in Cancell. nostra habere præf. C. coram nobis ad diem quo Breve nostrum de Exigend. vers. ipsum C. est retornabile, ad respond. præf. B. de transgr. præd. vol. eid. C. &c. ſi in Exigend. præd. occasione præmiſſ. & non alia, positus exiſtat, ut est dictum, tunc in Exigend. ill. ulterius faciend. interim Superſedeatis per Manucaption. ſuprad; & habens ibi tunc hoc Breve. Teſte, &c.

And if the Clerk, who hath the keeping of the Rolls for the taking of Statute-Merchant, forge a Bond in the name of another, and putteth the Mayor's Seal, and a Seal in the name of the party, to the ſame, and makes an Enrollment thereof in the Rolls, and afterwards doth certifie the ſame into the Chancery, for which a *Capias* is awarded againſt the party; then he againſt whom ſuch Proceſs is ſued forth may come into the Chancery, and have a Writ directed unto the Sheriff, relating therein the whole matter, and reciting that the party hath upon the matter ſued forth an *Audita querela*, directed to the Juſtices of the King's Bench, commanding them to call the parties before them, &c. and commanding the Sheriff, that if the party who is ſo ſued will find ſufficient Sureties to the Sheriff, to appear at the day in the King's Bench, and to pay the Debt, if he be condemned, that then he do ſurcease to arreſt or to trouble him, &c.

And if a man do cite another by the Pope's Bull perſonally to appear at the Court of Rome, &c. againſt the Statutes; now if he who made the Citation be committed to Priſon, he may ſue in the Chancery to have a ſpecial Writ directed to the Sheriff, rehearſing the matter, commanding him, that if the parties will find ſufficient Sureties, body for body, to appear before the King and his Council at a certain day, and perform what the Court ſhall adjudge or be decreed for the King or Council, that then he let him at large: and by that Writ the Sheriff ought to ſet him at liberty; and if he will not, he ſhall have an *Alias*, and a *Pluries*, and Attachment againſt him.

If a man depart from his Maſter without ſufficient cauſe, and another knowing the ſame doth retain him, for which the Maſter bringeth a Writ againſt him for the retaining of his

his Servant, upon which a *Capias* is awarded, he may in the Chancery find Sureties to appear in *Banco* at the return of the Writ, and have a *Superfedeas* thereupon to the Sheriff, not to arrest him; and if he have arrested him, to set him at liberty.

[237] And the like Writ and *Superfedeas* shall be awarded out of the Chancery, if the Action be brought against the Servant for his departure, and a *Capias* awarded, &c. he may find Sureties in the Chancery for to appear at the day, and have a *Superfedeas* to the Sheriff, that he do surcease for to arrest him, &c.

And if a man be sued in the Common Pleas in Debt, or in Trespass for damages, and a *Capias* or *Exigent* is awarded, if the Debtor do find Sureties in the Chancery to appear before the Justices at the day of the return of the Writ, and to stand right according to Law, he shall have a *Superfedeas* to the Sheriff not to arrest him; and if he hath arrested him, to set him at large. But it seemeth, that upon a *Capias* or *Exigent. ad satisfaciendum*, the Sheriff ought not to let the party at liberty after he hath taken him, because he is in execution for the party, &c. And so upon an *Exigent* awarded in a Writ of Account, he may sue forth such *Superfedeas*.

And so if a man doth become Survey for another, to pay a Fine in the Common Pleas or King's Bench, and the Fine is not paid, &c. for which cause Process of Utlagary is awarded against the Surety, &c. at the *Exigent* awarded against the Surety, he may sue forth a *Superfedeas*, and find Sureties in the Chancery to appear at the day, and to stand right to the Law: and thereupon he shall have a *Superfedeas* to the Sheriff, that he do not arrest his Surety, and if he hath arrested him, that he let him at liberty.

And it seemeth reasonable that such Writ shall be granted, because the Fine is a duty to the King, and the King may respite the same if he please; but if an *Exigent* be awarded upon a Judgment at the Suit of the party, such *Superfedeas* is not allowable.

If a man be indicted before Justices of the Peace, and put in *Exigent*, he may find Sureties in the Chancery to appear at the day of the return of the Process awarded by the Justices of Peace, and thereupon have a *Superfedeas* to the Sheriff not to arrest him, and if he have arrested him, to set him at liberty; and that Surety shall be body for body, &c.

If a man be put in the *Exigent* at the Suit of another in several Personal Actions, he may find Sureties in Chancery,

cery body for body, to appear to every Action at the return of the Writs; and thereupon he shall have a *Superfedeas* to the Sheriff, reciting that he hath found Sureties in Chancery to appear at the days, &c. commanding him not to arrest him, &c. And the forms of the Writs of the *Superfedeas* are in divers manners.

And if a man be indicted before Justices of Peace, and a *Capias* or *Exigent* be awarded thereupon, and afterwards the Indictment is removed by *Certiorari*; the party out of the Chancery may sue forth a *Superfedeas* to the Sheriff not to arrest him, &c. because the Indictment is removed by *Certiorari*, &c. or the Justices of Peace *ex officio* ought for to award a *Superfedeas* to the Sheriff after the *Certiorari* is come to them, to remove the Indictment, as it seemeth: *Tamen quere.* And in such case he may have a *Superfedeas* out of the Chancery directed to the Sheriff, commanding him, that if the party will yield himself to the Sheriff, and find Sureties to appear at the day of the return of the writ, that then the Sheriff do not arrest him, &c.

If a man sueth a Knight of St. Johns of Jerusalem, and other by their proper names, and not by the name of Knight of St. Johns, &c. and he be sued to the *Exigent*, the *Superfedeas* shall be purchased in the name of the Prior, and of the said Knight his *Confrater*, in the Chancery, and there they may find Sureties to appear at the day; and thereupon they shall have a *Superfedeas* to the Sheriff, that he do not arrest him, &c.

If a man be condemned in Debt or Trespass by false Verdict, and a *Capias* be awarded to arrest the party, now if the party sueth an Attaint, he may come into the Chancery, and there find Sureties that he shall appear at the day, &c. and will answer the party, and satisfy the King and the party that belongeth to them, if the Attaint doth pass against him; and upon the same he may have a *Superfedeas* to the Sheriff, that he do not arrest him, and the form of the Writ is such:

Rex. Vic. &c. Monstravit nobis A. quod cum B. nuper implacitasset in Cur. nostra coram Justic. nostris nuper itinerant. in Com. prædict. præfat. A. & quosdam alios de quadam transgr. eidem B. per præf. A. &c. illata, ut dicebat. de qua quidem transgr. idem A. per Inquisition. (in quam se posuit coram præfatis Justiciariis) convictus fuit, per quod prædict. A. carcerali custod. extitit mancipatus, in eadem moraturus quousque nobis de eo quod ad nos pertinet in hac parte, & præf. B. de dampnis sibi adjudicatis, fuerit satisfact. ac jam præf. A. arralnavit,
per

per Breve nostrum retornabile cor. nobis, &c. ubicunque, &c. quandam Juratam xxiiiij. Militum ad conveniend. Juratores, inquisitionis prædict. & nobis supplicaverit, ut, pendent. Jurata præd. sit coram nobis, ipsum A. a Prisons qua sic detinetur levare faciamus, ita quod eam prosequi possit secund. Legem, &c. Nos, volentes præf. A. in præmiss. &c. subvenire, & pro eo quod id. A. invenit coram nobis in Cancellar. nostra certos Manucaptores, viz. A. & B. de Com. tuo, qui manuceperunt, viz. quilibet eorum de satisfaciend tam nobis de eo quod ad nos pertinet, quam præf. B. de dampnis, ut prædicitur, adjudicatis, si Jurata prædict. contra eum transierit, seu idem A. eum non fuerit prosecutus: Tibi præcipimus, quod ipsum A. a prisione præd. si ea occasione, & non alia, detinetur in eadem, sine dilatione deliberari fac. per Manucaptionem suprad. ita quod Juratam præd. prosequi possit, prout decet; & habeas coram præf. Justic. ad diem præd. hoc Breve. Teste, &c.

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If a Man be condemned in Trespas, and the Plaintiff A prayeth an *Elegit*, and a *Capias* is awarded against the party for the King's Fine, the King may grant a *Superfedeas* directed to the Sheriff, that he do not arrest the Defendant, upon the *Capias*, because that the Plaintiff hath made his Election to have his Execution by *Elegit*.

And if in Trespas the Defendant do agree with the Plaintiff B pendant the suit, he shall have a *Superfedeas* to the Sheriff, that he do not execute the Process sued forth against him; but then it seemeth the same Agreement ought for to appear upon Record in the Court, &c.

If a man be condemned in Trespas, and the Defendant C doth bring an Attaint, and the Plaintiff sued an Execution by *Elegit*. and a *Capias* is awarded against the Defendant for the King's Fine; the Defendant in Chancery may sue a *Superfedeas* of the *Capias*, reciting in the Writ how that the Defendant hath brought an Attaint, and that the Plaintiff hath sued forth an *Elegit*, commanding the Sheriff to whom the *Superfedeas* is directed, that if the Defendant do yield himself to Prison, and there find Sureties to the Sheriff to satisfy the King for what doth belong to him, &c. that then he do deliver him out of Prison upon that Security, if he conceive the same to be sufficient Security.

If a man sueth a Writ de uxore abducta cum bonis viri, D and a *Capias* or *Exigent* be awarded thereupon, the Defendant may find Sureties in the Chancery, Body for Body, to appear at the day; and upon, the same he shall have a *Superfedeas* to the Sheriff, to set him at liberty, if he have arrested

arrested him. And so upon an Appeal of Rape, if the Defendant in Chancery finds Sureties, body for body, to appear at the Return of the Writ, and to stand to the Law, he shall have a *Superfedeas* to the Sheriff to set him at liberty, &c.

E And so if a Writ be granted out of the Chancery to attach one to find Sureties of Peace for a Menace to another, he may put in Security in Chancery by Surety to keep the Peace, and thereupon have a *Superfedeas* to the Sheriff, reciting the matter, commanding him to set him at liberty, if he have arrested him.

If a Man sueth a *Supplicavit* out of the Chancery to arrest a man to find Sureties of Peace, the Defendant who is arrested may have a *Superfedeas* in Chancery to the Sheriff, commanding him not to arrest him; and the Writ shall be such :

Rex, &c. salutem. Licet nuper ad supplic. M. nobis suggerentis I. eidem M. de vita sua ac mutilation. membrorum suorum graviter comminatum fuisse, tibi per breve nostrum preceperimus, quod ipsam I. coram te personaliter venire faceres, & ipsum ad sufficient. Manuceptores inveniend. qui ipsum I. sub certa pena, sibi per te rationabiliter imponenda, pro qua respondere volueris, manucep, quod ipse damnum vel malum aliquod eidem M. non inferret, seu inferri procuraret, compelleres, & quod si hoc coram te facere recusaret, tunc ipsum caperes, & in prisona nostra de N. salvo custodiri faceres, donec Securitatem invenerit in forma præd: quia tamen R. & S. Jgc. coram nobis in Cancell. nostra personaliter comparentes manuceper. pro prædict. I. quod ipse damnum vel malum aliquod eidem M. de corpore suo non inferret, nec inferri procurabit, videlicet, quilibet eorum sub pena xx l. quas concesser. de terris & catallis suis ad opus nostrum levat si idem I. damnum aliquod eidem M. de corpore suo intulerit, aut inferri procuraverit: Tibi præc, quod execution. Brevis nostri prædict. tibi in hac parte directi Superf. per Manuception. prædict, &c. Teste, &c.

And if the Justices of Peace do award a Precept or a Warrant against a man to find Sureties for the Peace, he against whom the Warrant is may find Sureties in the Chancery for to keep the Peace, &c. and upon the same have a *Superfedeas* to the Justices of the Peace, that they do surcease, &c. to arrest him, &c. and thereupon the Justices ought to surcease to make any Warrant against him afterwards; and if they have made any, that they ought to award a *Superfedeas* to the Sheriff, commanding him to surcease: and the Writ directed to the Justices of the Peace is such :

Rex dilect. & fidel. suis, Justic. suis ad Pacem nostram in Com. Berk. conservand. assign', salut', &c. Supplicavit nobis W. quod cum ipse metuat ipsum ad prosecutionem T. per vos capi & arrestari, ac graviter imprisonari, quousque securitatem invenerit, quod idem W. dampnum vel malum aliquod eid. T. de corpore suo non faciat, nec fieri procurabit, velimus Captioni & Arrestationi prædict. per sufficient. Manuceptores Superedere jubere: Nos, pro eo quod R.S.P. & F. de Com. W. in Cancell. nostra personaliter constituti manuceperunt, pro ipso W. quod ipse dampnum vel malum aliquod eid. T. de corpore suo non faciet, nec fieri procurabit, viz. quilibet eor. sub pœna centum librarum, quas concesserunt de terris & catallis suis ad opus nostrum levare, in casu quod dampnum vel malum aliquod eid. T. de corpore suo per præfat. W. vel procuracion. suam eveniat, supplicationi prædict. annuentes: Vobis mandamus, quod Captioni & Arrestationi corporis præd. W. ea occasione faciend. supersed. omnino per Manucept. supradict', &c. Teste, &c.

[239] And if the Wife be in fear or doubt of her Husband, that he will beat her or kill her, &c. she may sue a Supplicavit in Chancery against her Husband, to find Sureties that he do not beat her, nor evil intreat her, and for to govern, rule, and chastise her reasonably; and the Writ is such:

Rex Vic' &c. Supplicavit nobis R. ux. I. B. quod cum ipsa de vita sua, &c. per præf. I. B. graviter & manifeste comminata existat, velimus pro securitate ipsius R. in hac parte providere; Nos, supplicationi prædict. annuentes, tibi precipimus, firmit. injungentes, quod ipsum I. B. coram te corporalit. venire fac', & ipsum ad suffic. Manucept. invenienda, &c. ut supra, quod ipse præfat. R. bene & honeste tractabit & gubernabit, & quod ipse dampnum vel malum aliquod eid. R. de corpore suo, alit. quam ad virum suum ex caus. regimin. & castigation. ux. suæ licite & rationabilit. pertin', non faciet, nec fieri procurabit, quovis modo compellas. Et si hoc coram te, &c.

And if a man in a Court-Baron in a Writ of Right, or in another Court, as in London, in a Writ of Right, vouch a Foreigner to Warranty, &c. the Tenant who voucheth may sue forth a Superedeas directed to the Court, &c. commanding them that they do not proceed in the Plea, until the Warranty be determined, &c. quod vide in the Register, fol. 5. 11, & 13. And upon the same he may have an Alias, and a Pluries, and an Attachment against the Bailiffs or Mayor of London and Sheriff, if they will not surcease, &c.

And if a man sueth a Prohibition to the Spiritual Court and to the Parson, and notwithstanding the Spiritual Judge doth proceed to excommunicate the party, and upon Certificate

Certificate thereof in the Chancery a Writ of *Excommunicato capiendo* is awarded; he who sued the Prohibition shall have a *Superseas* to the Sheriff, reciting the whole matter, commanding him that he do not arrest the party; and if he have arrested him, that he deliver him: *quod vide* in the Register, fol. 67. And he may have a *Superseas* out of that Court out of which the Prohibition did issue, &c.

If the Collectors of the Subsidy or Tenths granted by the Clergy are excommunicated by the Ordinary for their Contumacy, &c. and that be certified, and thereupon a Writ directed to the Sheriff for to arrest them, if it be testified in the Chancery afterwards by the sovereign of the Collectors that they have satisfied and submitted themselves; then upon that a *Superseas* shall be directed to surcease to arrest them; and if he hath arrested them, that he deliver them.

And if the Bishop do certify an Excommunication into the Chancery against one for a contempt in a Suit depending before him, and thereupon a Writ of *Excommunicato capiendo* be awarded; if the Official do by his Letters after certify in Chancery, that the Defendant hath appealed to Rome, or elsewhere: now upon that certificate he shall have a *Superseas* to the Sheriff, that he do not arrest him pendant the Appeal; and if he have arrested him, that then he do deliver him, &c.

And so if he who is excommunicate sheweth in Chancery the Pope's Letters, testifying that he hath appealed, &c. he shall have a *Superseas* to the Sheriff, commanding him for to surcease, &c. and if he hath taken him by force of the Writ of *Excommunicato capiendo*, that then he do deliver him: *quod vide* Regist. fol. 68.

C If a man take one as his Villain, and the other sueth a Writ *de homine replegiando*, and he claimeth him as his Villain; he who is taken may put in Sureties in Chancery, to yield himself and his Goods, if, &c. and thereupon he shall have a *Superseas* directed to him who took him, not to take him; and if he hath taken him, that then he do deliver him. Regist. 79, 80.

D If a man do hold Plea in the County of a Trespass which is *Vi & Armis*, &c. the Defendant may sue out of the Chancery a *Superseas* unto the Sheriff or to the Bailiffs of the Hundred where the Plea is holden, reciting that a Plea of Trespass *Vi & armis* shall not be holden in a less Court than before the King, or other Justices by his commandment. Regist. fol. 111.

Writ of Superfedeas.

And upon a Writ of Error brought of a Judgment given E
in London or other Court, the party shall have a *Superfedeas*
directed to the Mayor and Sheriffs, or other Officer, to sur-
cease to award Execution. *Regist. fol. 129.*

If a man be distrained by a Process which issues out of F
the Exchequer, as Executor to an Accomptant there, he
may have a *Superfedeas* out of the Chancery directed to the
the Treasurer and Barons of the Exchequer, surmising that
he is not Executor nor Surety for the Accomptant, &c. com-
manding them that they do surcease, until they have enqui-
red the truth thereof.

And the like Writ is given where the Barons do award G
Process of Distress against any one who hath not any of the
Lands of him who was the Accomptant, &c. but of his Pur-
chase before he was Accomptant: *quod vi. Regist. 144.*

And if the Sheriff doth hold Plea of 40 s. the Defendant H
may sue forth a *Superfedeas* that he do not proceed, &c. or
after Judgment he may sue a *Superfedeas* directed to the
Sheriff, commanding him not to award Execution upon
such Judgment; and upon that an *Alias*, a *Pluries* and an
Attachment. *Regist. 145.*

If a man for debt of 10 l. sue in the County by divers
Plaints there, every Plaint under the Sum of 40 s. where
the debt is one entire debt, the Defendant may sue a *Super-
fedeas* to the Sheriff, commanding him not to hold Plea in
those Plaints.

If a man sue one in the County before the Sheriff for
breach of Covenants, to his damage of 10 l. or above the
Sum of 40 s. then the Defendant may sue a *Superfedeas* to the
[240] Sheriff that he do surcease; *quod vi. Regist. 146.*

And if a man do sue forth an *Audita querela*, to avoid A
Statute-Staple or a Statute-Merchant, he shall have a *Super-
fedeas* to the Sheriff, not to do Execution hanging the Plea,
&c. *Regist. 183.*

Note that the Constable of Dover, who is Warden of the B
Cinque Ports, cannot hold Plea of a thing which doth be-
long to be determined in the County, if it be not of a thing
concerning the keeping of the Castle of Dover; and if he
do, the party shall have a Writ directed unto him, to sur-
cease, and upon the same an *Alias*, and a *Pluries*, and an At-
tachment; and the Writ shall be such:

*Rex dilecto & fideli suo B. Constabulario Castri sui Dover',
& Castodi Quinque Portuum suorum, vel ejus locum tenenti,
salutem Cum inter ceteros Articulos quos Domin. Ed. quond.
Rex Angl', avus noster, ad emend. populi regni sui concess. or-
dinatum*

dinatum sit, quod Constabularius Castri Dover non impletet ad Portum Castri prædicti. aliquod Placit. forinsecum de Com', quod non tangit Custodiam ejusd. Castri; ac vos quodd. Placitum inter W. de C. & P. de quodam debito quod idem W. a præfat. P. exigit, & quod quidem Placit. Custodiam Castri præd. non tangit, coram vobis ad Portum Castri illius teneatis, & ipsum P. ea occasione per varias distractiones inquietatis minus juste, contra tenorem Articulorum prædicti, sicut ex parte ipsius P. nobis datur intelligi: Nos, Articulos præd. inviolabiliter observari volentes, vobis mandamus, quod si ita est, tunc de Placito illo cor. vobis ulterius tenendo Superfedeatis omnino, ipsumque P. contra tenorem eorund. Articulorum non molestetis in aliquo seu gravetis; & Distractionem, si quam, &c.

- C And if the Constable doth hold Plea of any thing of which he ought not for to hold Plea, the party shall have his action upon the Statute, although he doth not sue forth any Writ before directed to the Constable.

Writ de procedendo ad Judicium.

- D Note that by the Statute made An. 2. E. 3. cap. 8. it is enacted, that Commandment be not either by the great Seal nor the Petty Seal to delay common Right; but if such Commandments come, &c. that the Justices shall not surcease to do right in any point.

And by the Statute made An. 14 E. 3. cap. 14. the Justices shall not surcease for the great Seal or lesser Seal.

And by that it appeareth, that the King's Justices shall proceed according to Law, notwithstanding the King's Commandments directed and delivered to them: and if the party thinketh in his Conscience that such Commandments shall be made, then he may sue forth a Writ upon that Statute, commanding them to proceed, notwithstanding such Commandments, and the Writ shall be such:

Rex dilectis & fidelibus suis, W. &c. & sociis suis Justic. ad Assis. in Com. Salop. assign', salutem. Cum in Parlamento nostro apud Northampton An. Regni nostri 2. convocado, per Nos, Prælatos, Comites, Barones, & alios Magnates, ac totam Communit. regni nostri in eodem Parlamento existentes, concord. fuerit & statutum, quod non mandatur per Magnum Sigill. nostrum nec per parvum Sigillum nostrum, ad Communem Legem impediend. seu prorogand., & si talia mandata veniant, quod Justic. ea de causa ad Justic. fac. nullatenus supers. prout in Statut. præd. plenius continet: Vobis mandam', quod ad Justic. partibus in Assis. Novæ diss. quam T. arrainavit coram vobis

per Breve nostr. versus I. & A. uxor. ejus, & alios in Brevi nostro origin. contentos, de Ten'tis in E. faciend', virtute alicujus mandati de Magno Sigillo & Parvo Sigillo nostro vobis directi seu dirigend', nullatenus Supers. contra tenorem Statuti suprad'. Tiste, &c.

But it seemeth to be in vain to sue forth such Writ, if the Justices do consider their Oath, and their duty to God and the King: but because some Justices are fearful, and will not do a thing which may turn to their displeasure, that Writ was ordained, as it seemeth, and for no other cause, for the Statute was sufficient in it self; and the party may have in the end of the Writ these words, viz.

Sed ad Captionem ejusdem Assise, prout in jure & secundum Legem & consuetudinem regni nostri Angl' fuerint faciend. proced. Tiste, &c.

And by the Statute of West. 2. upon Issues joyned in the Common Pleas or King's Bench, they shall be tried by *Nisi prius* before the same Justices in the Country. And by the Statute of Fines, in the time of Vacation those Issues shall be tried before one of those Justices, associating to him a Knight, &c.

And by the Statute of York, a Justice of Assise, associating to him an honest man shall take *Nisi prius*, and try the Issues arising thereupon taken in the Common Pleas or King's Bench, if they need not great examination, &c. But in those cases it appeareth by the Register, the King by his Writ may restrain and command the Justices, that they do not award *Nisi prius*: and if they have awarded any Writ of *Nisi prius*, that they send a *Supersedeas*: and the Writ shall be such:

Rex Justic. suis de Banco salutem. Licet de communi consilio regni nostri concord. existat & statutum, quod Inquisitiones & Jurat. in Placito terre capiend', que magne non sunt examination', capiantur in patria coram uno Just. placei ubi mot. existunt, sociato sibi aliquo probò homine patrie, milit. sive alio, ita quod communis dies det. in Banco, & certi dies & locus dentur in patria in present. part', & etiam quod Inquisitio & Jurat. in Placito terre magnam examinac. requirent. coram duobus Just. de Banco in form. predict. capiantur: quia tamen Placitum quod est coram vobis in Banco præd. per Breve nostrum int. W. Petentem & T. Tenent. de Maner. de S. cum pertin. in Com. W. specialit. nos tangit, præsertim cum idem. T. dictum Manerium teneat ad termin. vite sue ex concess. nostra, & post mortem ejusd. T. idem Manerium ad nos & hered. nostros integre reverti debet; volentes indemnitati nostre prospicere in hac parte, Vobis mandamus, quod si ad Inquisic. inde capiend. procedere

cedere vos conting', tunc hujusmodi Inquisic. coram nobis in Banco præd. & non alibi capiatis, concordia & Statuto præd. non obstantibus: & si Inquisic. inde per breve de nisi prius capi demandaveritis, tunc Inquisic. illi in patria capiend. supersederi demandetis. Teste, &c.

A There is another form of Writ for that matter in the Register. And M. 32 H. 6 it appeareth, that is in the Justices discretion, whether they will grant *Nisi prius*, or not; and by the like reason, the King at his discretion, and by his writ directed to the Justices, may restrain the same.

And *Nisi prius* shall not be granted where the King is party; without the King's special warrant, or the King's Attorney's assent, notwithstanding the aforesaid Statutes.

Writ upon the Statute made for the King's Steward and Marshal, that they do not hold Plea, if not, &c.

B SEE by the Statute of *Articuli super Chartas, cap. 3.* That the Steward and Marshal shall not hold Plea of Freehold nor any Plea of Trespass, but only of Trespass done in the King's House, and other Trespasses done within the Verge, and of Contracts and Covenants which some of the King's Household ought to have against another of his Household, and no others; and no Plea of Trespass shall proceed which is not brought before the King remove out of the Verge where the Trespass shall be done, so that they be ended before the King go out of the bounds of the Verge where the Trespass is done; and if they cannot be ended there, the parties shall cease, and shall be tried at the Common Law. And the Steward shall not take cognisance of Debts of other men, but only of such as be of the King's House: he shall hold no other Plea by Obligation made at the Distress of the Steward or Marshal: and if they do contrary to that Ordinance, it shall be void. And the Court of the Marshalsea nor the Jurisdiction thereof shall not exceed above twelve Miles by the Statute made 13 R. 2. c. 3. And a man may add in an Action brought against him in the Court of the Steward or Marshal, that he was not of the King's Household at the time of the Trespass or Contract made, or that the Plaintiff was not one of the King's Household at that time. And if a man be sued in the Court of the C Steward and Marshal contrary to the Statute, then he who is grieved shall have such Writ:

Rex Sen. & Mareſchallo Hoſpitiſui ſalutem. Cum inter ceteros articulos quos Dominus Ed. quond. Rex Angl', avus noſter, ad emendationem ſtatus populi ſui conceſſit, ordinatum ſit, quod Sen. & Mareſchallus Hoſpitiſui noſtri non teneant Placita de Libero tenemento, de Debito, Conventione, Tranſgr', ſeu contractu hominum populi, niſi tantummodo de Tranſgr. Hoſpitiſui noſtri & aliis Tranſgr. infra virgam, & de Contractibus & Conventionibus qu. aliqui de eodem Hoſpitio aliis de eodem Hoſpitio fecerint, & in eodem Hoſpitio, & non alibi; ac jam ex querela A. & B. acceperimus, quod vos, ad proſecutionem I. de L. Placitum inter præſ. A. & I. qui de eodem Hoſpitio non ſunt, ut dicitur, de quod. Debito quod idem A. de præſ. I. exigit, tenetis coram vobis, in ipſius A. damnum non modicum & gravam, & contra formam Ordinationis prædict': Nos igitur, volentes dictam Ordinationem in omnibus & ſingulis ſuis articulis obſervari, vobis mandamus, quod ſi ita eſt, tunc de Placito illò coram vobis ulterius tenendo Superſedeatis omnino, ipſum A. contra tenorem Ordinationis prædict' non moleſtantes in aliquo ſeu gravant'; & Diſtinctionem, ſi quam, &c. Teſte, &c.

And if the Plea be lawfully begun before the Steward D
and Marſhal of the King's Houſe within the Verge, and before the Plea be ended the King doth remove; now the Plea is thereby diſcontinued, and then it behoveth the party to commence his action at the Common Law, and not within the Verge before the Steward and Marſhal; and if he do, the party grieved ſhall have ſuch Writ:

[242] Rex Senesch & Mareſchal. Hoſpitiſui ſalutem. Cum inter ceteros articulos quos Dominus Ed. quond. Rex Angl', avus noſter, ad emendationem ſtatus populi ſui conceſſit, ordinat. ſit, quod Senesch. & Mareſch. Hoſpitiſui noſtri non teneant Placitum de Libero tenemento, de Debito, de Conventione, ſeu Contractu, hominum populi, niſi tantummodo de Tranſgr' Hoſpitiſui noſtri, & aliis Tranſgr. factis infra virgam, & de Contractibus & Conventionibus qu. aliquis de dicto Hoſpitio fecerit alteri de eodem Hoſpitio, & in eod. Hoſpitio, & non alibi, & nullum Placitum de Tranſgr. placitent. aliud, quod non ſit attachiatum per eos antequam nos eximus virgam ubi Tranſgr. facta fuit, & Placit. ill. celeriter de die in diem placitent & terminent, ita quod placitent. & terminentur antequam exeamus eand. virgam ubi tranſgr. facta fuit, & ſi forte, infra bondas illius virge terminari non poterint, ceſſent huiusmodi Placita coram Senesch. & Mareſch', & ſint Querentes ad Communem Legem; ac jam ex gravi querela A. & B. accepimus, quod vos ad ſectam R. de B. ipſos, &c. ad reſp. coram vobis prædict'. R. de quad. Tranſgr. eid. B. per præſat. A. & B. infra virgam noſtram apud E. an', &c. 12. facta

facta, ut dicitur, quod quid. Placitum per vos attachiatum non fuit antequam virgam ill. exivimus, distringitis, & ipsos ea occasione multipliciter inquietatis minus iuste, in ipsos. A. & B. dispendium non modicum & gravamen, & contra tenorem articulorum predict. Nos igitur, volentes dictam Ordination. in omnibus & singulis suis articul. inviolabiliter observari, Vobis mandamus, quod si ita est, tunc ipsos A. & B. ad resp. coram vobis de huiusmodi Transgr., nullatenus distringatis, sed de Placito illo coram vobis ulterius tenend. omnino Superf. & Distractionem, si quam, &c. Teste, &c.

A And if a man be sued by Plaint before the Steward and Mareschal of the King's House, who is not of the King's Household, and the Debtor plead, and affirmeth the Jurisdiction of the Court; and the Cause be adjudged against him; yet he shall have an action upon the Stat. against the party who sueth him there; *quod vide T.3. H.3. Title Estoppel.*

Writ of Certiorari to remove Records, &c.

B THE Writs of Certiorari for to remove Records out of one Court into another are of several forms; and the form of the Writ to remove the Record of Redisseisin is such:

Rex Vis, &c. Quia quibuscumque certis de causis certior. velimus super Recordis & Processu cuiusdam Inquisition. factae coram te & custodibus Placitorum Coron. nostrae in Comit. tuo apud N. per Breve nostrum super quadam Rediss. I. per R. fact. ut dicitur, de uno mesuag. cum pertin. in N. Tibi praecipimus, quod si iudicium inde redditum sit, tunc Recordum & Processum predict. cum omnibus ea tangentibus nobis sub sigillo tuo distincte & aperte mittas, & hoc Breve, ita quod, &c. ubicunque, &c. ut inspectis Rec. & Processu praed. ulterius inde fieri fac. quod de jure & secundum Legem & consuetudinem regni nostri Angl. fuer. faciend. Teste, &c.

And he may remove it after a Disseisin, &c.

And if a man be attainted in a Redisseisin or a Postdisseisin, and hath no Lands within the County to be put in Execution, he may remove that Record by a Certiorari into the K. Bench, and there have Execution. And he may remove a Recovery in an Assise of Novel Disseisin into the K. Bench by a Certiorari in like manner. But the Writ of Certiorari

See a Recovery in ancient Demesne, 39 H. 6. 3, &c. 4.

But see 44 E. 3. 28. 36 H. 8. Br. Certiorari 20. there is no such Writ of Certiorari to remove the Record in Com. B. immediately, but first in the Chancery. Yet 43 Ass. 20. the contrary is admitted.

saith,

saith, *Si iudicium inde redditum sit, tunc Record, Process. &c.* as above. By which it appeareth, that it ought that the judgment be given in the Assise, &c. otherwise it seemeth he shall not have the Writ; for the *Certiorari* is said to remove the Record, to the intent he may sue forth Execution upon the same when it is removed in the K. Bench, for there they may award Execution into every County to execute the same.

21 Ed. 3. 5.
Br. Cert.
Action 5.

If a man do recover Lands by Assise of *Novel disseis.* and the Defendant will sue a Certificate before other Justices, there he ought to sue forth a *Certiorari* to the Justices of Assise, to certifie the Record unto the new Justices who hold Plea upon the Certificate, and the words (*Sine dilatione*) shall not be put in any Writ which hath a certain day of return.

And if a man recover *per Assise*, and the Defendant will sue an Attaint before other Justices, then he ought for to have a *Certiorari* to the Justices of Assise to certifie the Record, *Si iudicium redditum sit.*

And if a man recover before Justices in Eyre in an Assise of *Novel disseis.* the other party may sue forth an Attaint before other Justices, and have *Certiorari* to the Justices in Eyre to send the Records before other Justices.

37 H. 6. 16.

And the King may send his Writ of *Certiorari* to the Barons, Treasurer, and Chamberlains of the Exchequer, to certifie the Record of Assise in the Treasury in their custody into the King's Bench.

9 E. 4. 50.
Choc. 24 E. 3.
24. 15 E. 4.
5. 8 E. 4. 25,
26.

There is another Writ of *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certifie the Record of the Assise taken, but the judgment was not given, because the Defendant died; but the Writ is of little effect, for that by the death of the Def. before judgment the Writ is abated.

And if a man will sue an Attaint upon Recovery in an Assise, which Record of Assise is in the Treasury, then he who bringeth the Attaint ought to sue a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certifie the Record of Assise before the Justices before the Attaint be sued forth.

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If a man do recover damage in an Assise of *Novel disseis.* and before he hath Execution of the damages the Record is sent into the Treasury; then he may sue a *Certiorari* to the Treasurer and Chamberlains, to certifie the Record of Recovery in the Assise before the King, that Execution may be awarded for the damages.

And if a man recover Lands and Damages in an Assise of *Fresh Force*, and the Defendant hath not any thing within the

the City or Borough for to satisfie the damages ; then the party may sue a *Certiorari* to the Mayor or Bailiffs, to certifie the Record into the King's Bench, that he may have Execution of the Damages recovered.

If the King maketh certain persons Justices of Assize, &c. in one County, and afterwards at another Assises he maketh other Justices of the same County ; a general *Certiorari* shall be sued to the first Justices, to certifie all the Records of Assize and Juries which were taken in that County before the new Justices.

And in Assize of *Novel disseisin*, if the Verdict pass for the Plaintiff, and before judgment be given a new Commission is to other Justices of the same County, the party for whom the Verdict passed may sue forth a *Certiorari* to the first Justices, to remove the Record into the King's Bench, to have judgment given there upon that Assize and Verdict past ; or may have a *Certiorari* to the first Justices, to send the Record before the new Justices, that they may give judgment thereupon : and it behoveth to have another Writ unto the new Justices, to receive the Record, and that they proceed to judgment. And when the Record is removed after Verdict given before other Justices, and they delay to proceed to judgment upon the Verdict, the party for whom the judgment should be given may sue forth a Writ directed to them *quod receptis & visis Record. & Process. præd.* they proceed to judgment, &c. And thereupon the party may have an *Alias*, and a *Pluries*, *Vel causam nobis significes* : and if they will not do any thing, whether he shall have an Attachment is a Question ; for there is Statute made *A. 3. E. 3.* which willeth, that Commissioners in special case limited by the Statute shall be punished for their misdoings, but it seemeth it shall not be if the Statute be not made for that cause only.

And *An. 27 E. 3.* in Assize, a Justice was indicted, for that he caused an Indictment, which was found to be but Trespasse to be entred in Record as Felony, &c. And the same was adjudged a void Indictment, because it was to make void a Record. But yet it seemeth he might be indicted, for taking of money, or for other falsity, which doth not destroy and defeat the Record. *Quære.*

And a man may have a Writ to the same Justices before whom the Verdict passed, &c. to proceed to judgment, as well as he shall have a Writ to other Justices before whom the Record is removed.

If a man in an Assize of *Novel disseisin*, or other Action real, before Justices in Eyre vouch one to Warranty, who

Writ of Certiorari to remove Records.

who presently entreth into Warranty, and afterwards loseth; the Plaintiff shall recover, and the Tenant shall have Judgment to recover in value against the Voucher: now if he who recovered in value will have Execution of the Lands recovered in value, he ought to sue a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record in the Assise into the Chancery; and when it is there certified, the King shall send the Record by *Mittimus* into the Common Pleas, and thereupon the Justices shall award a *Scire Facias* against the party against whom the Recovery was, to come and shew why Execution should not be done of Lands in value.

And a man may sue a *Certiorari* directed to the Justices of Assise, to remove the Records of Assise into the Chancery, and also a Deed which is before them, &c. and afterwards he may sue forth a Writ of *Mittimus* unto the new Justices of Assise of those Records, and of the Deed which remained before the other Justices.

And if the Husband and Wife sue a Bond which is made to the Wife in the Common Pleas, and the Deed is there denied, for that they remain in the keeping of the *Custos Brev.* and the Husband dieth; the Wife may have a Writ out of the Chancery directed to the *Custos Brevium* in the Common Pleas, that he deliver the Deed to the Wife, because the Plea is determined by the death of the Husband.

And when the Justices in Eyre come, and shall be in any County by the King's Commission, then a Writ shall be sent to the Justices of the Common Pleas, to adjourn all the Pleas of that County which are in the Common Pleas before the Justices in Eyre, to be determined before them: and if the Justices in Eyre cannot determine the Pleas before they depart out of the County, then a Writ shall be sent to the Justices in Eyre, to send those Records and Pleas which are not determined nor adjudged into the Common Pleas again. And the Writ shall be such:

Rex dilecto & fideli suo S. salut. Cum Loquela que fuit cor. Justic. nostris de Banco per Breve nostrum int. S. Petant. & I. Tenent', de uno mesuag. cum pertin. in T. in Com. N. una cum Brevi predict', cor. vobis & sociis vestris nuper Just. nostris itinerant. in Com. predict. missa fuisset placitanda, ac Placitum illud quibusd. cert. de caus. in itinere pred. remanserit indiscussum, absque hoc quod id. Placit. alicubi adjornat. fuisset placitand', per quod ex parte ipsius S. nobis est supplicat', ut sibi in premiss. Justic. facere velimus; Nos ea de causa attendentes expediens fore, quod Just. nostri de Banco super Record. & Processu Loquela

Loquela prædict' cor. vobis & præfat. sociis vestris in itinere prædict. certiores, vobis mandam', quod Record. & Process. præd. una cum Breve præd. & omnibus aliis ea tangentib', præf. Just. nostris de Banco sub sigillo vestro distincte & aperte sine dilatione mittatis, & hoc Breve, ut his inspectis, ulter. proced. in Loquela præd. secund. Legem. & cons. regni nostri valean. Teste, &c.

A And if an Assise of Novel Disseisin be brought in the King's Bench, and the Def. alledge and plead, that there is a Writ of a higher nature depending in the Common Pleas for the same Land between the Plaintiff and Def. then if they be at issue, whether there be such a Writ depending or not, the Def. ought to sue a *Certiorari* out of the Chancery to the Justices of the Common Pleas, to remove and certify the Records into the Chancery; and upon the same certified, he shall have a Writ of *Mittimus* out of the Chancery to the Justices of the King's Bench; with which Writ the King shall send the tenor of the Record which is there into the King's Bench. And the Writ of *Mittimus* shall be such :

Br. Brief
414. Vid.
22 H. 6. 15.
23 Ass. 14.
Br. Brief
282.
40 E. 3. 32.
Br. Brief
304.

Rex dilecto & fideli suo R. de W. & sociis suis Just. ad Placita coram nobis tenenda assign. salut. Cum R. P. super arramavit quandam Assisam novæ diff. cor. nobis apud West. per Breve nostrum versus B. de ten' tis in A. & duo mesuag', tres carucatas terre, viginti acras prati, cum pertin. in eadem Villa in visum posuiss. idemq; H. placitand. in Assisa illa allegasset, quod Breve de altiori natura tunc & diu ante pendeat inter partes prædict. coram dilectis & fidelibus nostris W. & sociis suis Justiciariis nostris de Banco, & Record. & Process. inde coram præfat. Just. nostris de Banco habita ad Warrantum vocasset, ut accepim. Nos attendent. expediens esse & necesse, quod vos super tenor. Record. & Process. prædict. coram præfat. Just. de Banco habit. certioremini, tenorem illum quem coram nobis in Cancell. nostra venire fecimus vobis mittemus sub pede sigilli, mandam', quod inspectis Record. & Processu prædict. ulterius fieri fac. quod de jure & secundum Legem & cons. regni nostri fuerit faciend. Teste, &c.

B And if a man do recover in an Assise of Novel Disseisin before Justices of Assise in the County, and before Execution sued of the damages the Record is removed into the Chancery by *Certiorari*; he who recovered in the Assise may sue forth a Writ of *Mittimus* to send the Record into the King's Bench, commanding them for to proceed, and to award Execution. And the Writ is such :

Ret

Writ of Certiorari to remove Records.

Rex dilectus & fidel. E. & sociis suis Justic. nostris ad Placita coram nobis tenend. assign. salutem. Cum I. per Recogn. Ass. de novo diff. quam W. arrain. coram B. & sociis suis nuper Just. Domini Ed. quondam Regis Angl. avi nostri, ad Ass. &c. assign. versus R. & alios, &c. de Tenementis in T. recuperasset seisinam suam de uno messuag. cum pertin. in D. per consider. cur. predict. & dampna sua, quæ ad x li. taxabantur, sicut per Record. & Process. Ass. præd. quæ coram nobis certis de causis venire fecimus, plenius apparet; ac Executio Judicii quoad dampna recuperanda adhuc restat faciend., sicut ex parte ipsius I. nobis dat. intelligi: Nos igitur, volent. dictum judic. execut. debite demandari, Record. & Process. præd. vobis mittim. sub pede sigill. nostri, mandantes, quod vis. Record. & Process. præd. alter. quoad exec. Judic. præd. fieri faciatis quod de jure & secundum Legem & cons. regni nostri fuerit faciend. Testis, &c.

And if a man recover Lands by Assise of Novel Disseisin before Justices of Assise, and the Defendant hath a Writ of Warrantia Chartæ depending in the Common Pleas, the party may sue a Certiorari to remove the Record of the Assise in Chancery, and thereupon have a Mittimus of the Record of Assise to the Justices of the Common Pleas, and in the end of the Writ shall be said, *ut hiis inspectis, securius procedere valeant in Placito Warrantiæ predict. secund. Legem, &c.*

And in Assise of Novel Disseisin, if the Defendant plead two or three Recoveries in Assise before other Justices, which Record is in the Treasury, &c. now if the Record be denied, for which he sueth a Certiorari to the Treasurer and Chamberlains of the Exchequer, to certifie the Records at a certain day into the Chancery; if they at the day certifie any Records, but do not certifie that there are other Rolls of the same Justices remaining in the Treasury in the Tower of London, so as that they have not made a full search of the Records; then the King shall send to the Justices of Assise his Writ, reciting the matter, commanding them for to continue that Assise until another day, so as the Defendant be not damnified by failing of the Record. And the same seemeth to be reasonable.

And if a man be bound in a Statute-Staple to pay a certain sum of money at a day certain, after the day the party who hath the Statute may come to the Mayor of the Staple and shew him the same, and pray him to certifie the same into the Chancery; and if the Mayor will not so do, then the party who hath the Obligation may come into the Chancery, and shew the same there, and pray a Certiorari to the

the Mayor to certifie the Inrollment of the Statute : and if the Mayor do return, that he hath twice, or oftner, certified the same before that time, as appeareth by the Inrollment made by the Mayor, if there appear no such Certificate upon Record in the Chancery, then he who hath the Bond of the Statute may sue forth a new *Certiorari* to the Mayor, reciring in the Writ, that there is not any Certificate recorded in the Chancery, commanding him to certifie the Inrollment of the Statute which is before him ; and upon the same he may have an *Alias* and a *Pluries* against the Mayor, if he will not certifie the same, and also an Attachment against the Mayor, directed to the Sheriff, &c.

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The Writ of *Certiorari* is an Original Writ, and issueth sometimes out of the Chancery, and sometimes out of the King's Bench, and lieth where the King would be certified of any Record which is in the Treasury, or in the Common Pleas, or in any other Court of Record, or before the Sheriff and Coroners, or of a Record before Commissioners, or before the Escheator ; then the King may send that Writ to any of the said Courts or Offices, to certifie such Record before him in *Banco*, or in the Chancery, or before other Justices, where the King pleaseth to have the same certified : and he or they to whom or who the *Certiorari* is directed, ought to send the same Record according to the tenor of the Writ, and as the Writ doth command him ; and if he or they fail so to do, then an *Alias* shall be awarded, and afterwards a *Pluries*, *Vel causam nobis significes*, and after an Attachment, if a good cause be not returned upon the *Pluries*, wherefore they do not send the Record.

Vid. 10 El.
Dyer 274.
275.

But see
Lambert
411. The
use at this
day is, to a-
ward a *Sul-*
pna to the
Commis-
37 H. 6. 30.
Marle.

Also the King might by such Writ of *Certiorari* send for the tenor of the Record, or for the tenor of the tenor of the Record, at his Election ; and those Writs ought for to be obeyed, and the Records sent, as the Writ commandeth them to do ; and the form of some of those Writs here followeth :

Rex dilecto & fideli suo R. salut. Quia quibusdam certis de causis Certiorari volumus super Record. & Process. Utlag. in I. Com. T. promulgat. & coram vobis & sociis vestris Just. nostris ad divers. Felonias in Com. præd. audiend. & termin. assign. retornat : Vobis mand. quod tenor. Record. & Process. præd. or thus, tenor. Record. & Process. Utlag. præd. cum omnibus ea tangent. nobis in Canc. nostra sub sigillo vestro distincte & aperte sine dilacione mittatis, & hoc Breve. Teste, &c.

And

Writ of Certiorari to remove Records.

And to certifie an Indictment taken before the Justices in Eyre, the form is such :

Rex, &c. *Quia super Præsentation. factam coram vobis & sociis vestris Justic. nostris itinerant. in Com. Lincoln. de morte A. unde B. captus & detentus in prisona nostra de N. relictus est, & etiam super Inquisition. inde coram vobis ibid. fact. quibusdam certis de causis volumus certiorari ; Vobis mandamus, quod irrotulationem Præsentat. & Inquisitionis prædict. nobis sub sigillo vestro distincte & aperte sine dilatione mittatis, & hoc Breve. Teste, &c.*

And there is another form of Writ directed to the Coroners :

34 *Ass. 40.*
87. *Certiorari.*
9. the Writ
was awarded to the
Executors
of the Co-
roner.
Vid. 36 H. 6.
24. for *Certi-*
orari to the
Coroners.
Vid. 2. Eliz.
Dyer 223.
Prother's
Case.

Rex Coronator. suis in Com. Lincoln. salut. *Quia quibusdam certis de causis certiorari volumus super Recordo & Processu cujusdam Appell', quam W. nuper Probator. defunct. fecit versus S. de quadam Roberia quam id. W. & B. in Com', &c. ad invicem fecisse dicebantur : Vobis præcipimus, quod Record. & Process. ejusd. Appell. cum omnibus ea tangentibus, nobis sub sigillis vestris, &c.*

And that Writ lieth where a man before Justices becometh an Approver, and the Coroner appointeth him to make his Approvement, and afterwards the Approver dieth ; the King may write unto the Coroner to send him the Record of the Approvement.

And another form of *Certiorari* to the Mayor and Sheriffs of London.

Rex Major. & Vic. Lond. salut. *Quia quedam negotia per Appell. Indictamenta & Attachiamen. coram vobis in Civitate præd. Lond. nuper intrata nondum terminant', & quedam Inquisitiones in eadem Civitate factæ fuerint retornat', quorum quidem negotiorum Inquisitiones, Record. & Process. penes vos resident. ut dicitur, & quæ omnia per dilectos & fideles nostros B.C. & D. Justic. nostros ad diversas transgr. in Civitate præd. fact. audiend. & terminand. assign', expediri volumus, & finalis terminari : Vobis mandamus, quod præd. Record. & Process. cum omnibus ea tangent. præf. Justic. sub sigillis, &c.*

And if the King by virtue of any Writ of *Certiorari* remove any Record before any of the Justices, he may afterwards send for that Record, and remove the same before himself, or other Justices, at his Election ; and then the Writ is such :

Rex, &c. *Quia quibusdam certis de causis Certiorari volumus super Record. & Process. cujusdam Inquisitionis capt. coram dilectis & fidelibus nostris W. & P. Justic. nostris ad Gaolam nostram de N. assign. deliberand', pro morte E. unde C. pro morte prædict. relictus fuit, ut dic. quæ quidem Record. & Process.*
coram

Coram vobis certis de causis venire fecimus, que penes vos resident, ut dic' : Vobis mandamus, quod Record. & Process. præd. cum omnibus ea tangent. nobis sub sigillis vestris distincte, &c.

G And when the King would be certified of an Outlawry in the County, then the *Certiorari* shall be as well to the Sheriff as to the Coroners of the County to certify the same. But if a man be condemned in the King's Bench, and afterwards outlawed for the King's Fine upon his condemnation; if he will sue forth a Pardon of the Outlawry, he ought to have a *Certiorari* out of the Chancery, to certify the Record of the condemnation, which shall be such:

Rex dilecto & fideli suo I. &c. Capitali Justic. suo, salut'. Cum E. de quadam transgr. F. vi & armis facta coram nobis convictus, & pro eo quod non venit coram nobis ad satisfaciend. nobis de redemptione sua que ad nos pertinet in hac parte, & præfat. F. de dampnis sibi in hac parte adjudicat. in Exigend. posit. fuisset ad utlagand', & ea occasione postmodum utlagat', que quidem utl. coram nobis jam est retornata, ut accepimus, ac idem E. nobis supplicaverit, ut cum ipse præf. F. de dampnis suis præd. jam satisfecerit, velimus ei Utlag. præd. gratiose pardonar' : Nos ea de causa certior. volentes super Record. & Process. Utlag. præd', & si idem E. præfato F. dampnis præd. satisfecerit (ut dictum est) necne, Vobis mandamus, quod nos super præmiss. sub sigillo vestro distincte & aperte, &c. reddatis certiores.

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A And if a man be indicted before Justices of Gaol-delivery of Felony, and afterwards is acquitted; then if he who is acquitted doubteth he shall be troubled by reason of the same Indictment, he may sue forth a *Certiorari* to remove that Record and Process of the Inquisition, &c. into the Chancery, &c.

B And if a man do recover Debt or Damages before Justices of Oyer and Terminer, and hath not Execution, he may remove the Record and the Process into the King's Bench; and there sue Execution, and have a *Scire facias* upon that Record, &c.

14 H. 7. 15.
15 H. 7. 5.
36 H. 6. 23.
39. H. 6. 34.

And if a man do recover Damages in an Action of Trespass before Justices of Oyer and Terminer, and hath the party in Execution by reason of the Judgment; if the party in Execution dieth in Prison, he who recovered may sue a *Certiorari* to the Justices to remove the Record into the King's Bench, that the Justices there may award Execution as the Law requireth in such case. And, I think, in that case, that the party shall have Execution by *Elegit*, or by *Scire facias*; for it seemeth not to be reasonable, that the

34 H. 6. 47.
Contra.
4 E. 4. 39.
33 H. 6. 48.
Danby.
47 E. 3.
Execut. 46.

R r

death

death of him who dieth in Prison should be a satisfaction to the party. *Tamen quare*, for the same is a doubt.

If a man be arraigned of Murther, and found guilty *se defendendo*, for which he is bailed, or committed to prison, he may have a *Certiorari* to remove the Record into the Chancery, that he may sue forth a pardon thereupon according to the course of the Law, &c.

If a man recover damages in Trespass in the King's Bench, and hath the Defendant's Lands in Execution by *Elegit*, and then he who recovereth is disseised by the other, for which he bringeth an Assise before the Justices of Assise; he who bringeth the Assise ought to have a *Certiorari* to the Chief Justice of the King's Bench, to certifie the Record and the proceedings to judgment given in the King's Bench, and of the Execution there; and the Plaintiff may have the Record in Chancery exemplified under the Great Seal, if need be, to the Justices of Assise.

And if a man recover by Assise of *Novel disseisin*, and the party will sue an Attaint in the Common Pleas, or in the King's Bench, he ought to sue a *Certiorari* to the Justices of Assise, to remove the Record into the King's Bench, or into the Chancery, &c. that he might send the same before the Justices before whom the Attaint is sued, &c.

And it appeareth by the Register in the Title [*Certiorari*] that if False Judgment be given before the Steward and Marshal of the King's House, upon a Plaint there sued, that the party may sue an Attaint by Writ before the Steward and Marshal to attaint that Jury, &c. and that the King may send a *Certiorari* to certifie the Record into the Chancery, which shall be directed to the Steward and Marshal of the King's House; but the Record shall be certified under the Seal of the Steward only, as appeareth by the words of the Writ, &c.

There is another Writ of *Certiorari* directed to the Treasurer and Barons of the Exchequer, to certifie the King of the debt which *I.* oweth unto him, and of the debt which the Ancestor of the said *I.* owed the King, and which are clear debts, and to certifie the same without delay under the Exchequer Seal, and not into the Chancery, nor into the King's Bench.

There is another *Certiorari* directed to the Justices of Gaol-delivery, to certifie the Record and Proceedings upon an Indictment of Murder, and Acquittal thereupon into the Chancery, &c.

There is another *Certiorari* to the Justices of peace, to
certifie

certifie into the Chancery the tenor of the Records and Process of Outlawry of several persons returned before them.

There is another Writ of *Certiorari* directed to the Steward and Marshal of the King's House, to certify under the Seal of the Steward into the King's Bench an Indictment taken before the Steward and Marshal, which the King would have to be determined only before him in the King's Bench.

There is another Writ of *Certiorari* to the Mayor and Sheriffs of *York*, to certify the tenor of the Record and Proceedings in an Assise of *Fresh force* sued before them in the same City without Writ, and to certify the tenor of the Record and Proceedings in the Chancery.

There is another Writ of *Certiorari* to the Bishop of *Oxford*, to certify into the Chancery how many persons were admitted, instituted and inducted into such a Church, since the year of King *E. 4.* until this time, and at whose Presentation, and by what Title, and in what manner.

There is another Writ of *Certiorari* to the *Custos brevium*, to certify the King in the Chancery the tenor of the original and judicial Writs. and the Warrants of Attorney which are in his Custody concerning such an Action or Suit.

And another Writ directed to the Treasurer and Chamberlains of the Exchequer, to certify the King in the Chancery the Record and Proceedings of a Writ of *Quo warranto* sued by the King's Ancestor, King *Edward* the first against the Abbat of *Westminster*, for certain Liberties claimed by the said Abbat, &c. [247]

And another Writ of *Certiorari* to the Commissioners of Sewers, to certify the King in the Chancery at a certain day all the Presentments before them made against such a person, &c.

And a Writ of *Certiorari* directed to the Chief Justice of the Common Pleas, to certify the tenor of a Record and proceedings of Utlagary against such a one in *London*, remaining in *Middlesex* before the Justices of the Common Pleas, and to certify the same into the Chancery.

And if a Baron, who is a Peer of the Realm, be sued in the Common Pleas, and Process be awarded against him by *Capias* or *Exigent*, then he may sue a *Certiorari* in the Chancery, directed to the Justices of the Common Pleas or King's Bench, testifying that he is a Peer of the Realm, commanding them to award such Process against him as

R x a

they

they ought to do against a Peer of the Realm: and the Writ is such:

Rex Justiciar. suis de Banco salutem. Mandamus vobis, quod si G. T. mil. coram vobis ad sectam alicujus per Actionem personalem implacitatus existat, talem Processum, & non alium, vers. ipsum in Action. predict. fieri faciat, qual. versus Dominos, Magnates, Comites, seu Barones Regni nostri Angl, qui ad Parliamenta nostra de summonitione venire debent, aut eorum aliquem, secundum Legem & cons. regni nostri Angl. fuer. faciend, quia pred. G. T. unum Baron. regni nostri pred. ad Parliamenta nostra de summ. Regia venient. record: & hoc vobis mandam, & aliis quor. interest innotescimus. Teste, &c.

And if a man recover damages and costs in an Assise of Novel Disseisin, he may sue a Certiorari to remove the Record into the Chancery, directed to the Justices of the Assise, to the intent that the King may send the same to any of his Courts, that he who recovereth may sue Execution of the damages recovered; and upon that Record sent into the King's Bench, he shall send that Record into the Common Pleas by Writ of Mittimus directed to the Justices there, that they do as they ought for to do according to the Law, to make the damages to be levied.

There is another form of Certiorari by these words:

Rex Vic, &c. Volentes certis de causis certior. super tenorem Record. & Process. Utlag. in W. de B. de Com. N. Husbandman, in eodem Com, or thus, in Hustingo nostro London. promulgat, & coram Justiciar. ipsius Regis de Banco cert, quod quidam Record. & Processum idem Rex coram eo cert. de causis venire fecit, ut dic, ac si idem W. se redd. prisonæ Marischalis ipsius Regis cor. eo occasione predict, necne: Ideo tenor Record. & Process. Utlagar. predict, necnon Certificatio redditions illius eidem Regi in Cancell suam, sub sigillis I. F. capital. Justic. sui ad Placita coram ipso Rege tenend, distincte & aperte sine dilatione mittantur cum hac Billa. Teste ipso Rege apud Westm. xij. die Maii, an. regni sui 30.

And by that it appeareth, although the Record be remaining in Banco, yet the King may send to remove it into the Chancery.

And if a man be arraigned of Murther, and it is found that he killed the party *se Defendendo*, he ought for to sue a Certiorari to remove the Record into the Chancery, and upon the Removal thereof to have his Pardon; and the form of the Pardon doth appear in the Register, fol. 287, and 288.

And if a man be attainted in Assise of *Novel disseisin* before the Justices of Assise, of a *Disseisin* with force, and be afterwards outlawed for the King's Fine; if he will have a Pardon of the Utlagary, he ought for to have a *Certiorari* directed to the Justices of Assise, to certifie the King in his Chancery the tenor of the Record of the Assise, and also another Writ to the Justices, to certifie the King in his Chancery whether the Defendant in the Assise hath yielded himself to prison, and hath satisfied the party his damages. And if the same be so certified in the Chancery, then upon that Certificate he shall have his Pardon of the Outlawry, and the form of the Charter of Pardon appeareth in the Register, 288.

And if a man be condemned in the Common Pleas in Debt and Outlawry upon the same; then before he shall have his Pardon, he ought for to yield himself to the Prison of the Fleet, and satisfy the party, and the Record of his Condemnation and of the satisfaction ought to be certified by *Certiorari* unto the King in his Chancery; and thereupon he shall have his Pardon: and that is by the Statute of 5 E. 3. cap. 12.

And if a man be outlawed severally at the Suit of three several Persons in several Actions in which he was condemned, he ought to sue a *Certiorari* to remove the tenor of those Records and Process into the Chancery; and also to have a *Certiorari* to the Justices of the Common Pleas, if the Suit be there, to certifie the King in Chancery whether he hath yielded himself to the Prison of the Fleet, and hath satisfied the Parties; and when the Chief Justice hath certified the same into the Chancery, then he shall have his pardon for the Outlawries, and not before: and the form of the Pardon appears in the Register, 288.

There is another *Certiorari* to the Escheator, to certifie the manner and cause of taking of Lands into the King's hands after the death of one; and the Writ is such:

Rex Escheatori, &c. salut. Cum quibusdam cert. de causis certior. volumus super mod. & caption. terr. & tenementor. que fuer. I. defuncti in B. in Ball. tua per te in manam nostram, ut dicis: Tibi precipim', quod nos in Canc' nostra super mod. & causa suprad. sub sigillo tuo distinct. & apert. sine dilatione redd. certior', hoc breve nobis remittentes. Teste, &c.

But note, that it is enacted by Statute, that if the Escheator find any Office of any Lands or Tenements for the King, [248] that he ought for to return the Office into the Chancery,

Writ of Forcible Entry upon the Statute.

or into the Exchequer, within a month after the finding thereof, upon pain of 20*l.* payable to the King, and to him that will sue for the same: and that Statute was made Anno 8 H. 6. cap. 16.

There is another *Certiorari* directed to the Escheator, to certify the King in Chancery, at his peril, the value of the Knights Fees and of the Advowsons which I. had, who is dead, who held of the King the day of his death in *Capite*; and the Writ is such:

Rex Escheatori, &c. Volent. certis de causis certior. super vero valore Feod. Milit. & Advoc. Ecclesiar. quæ fuer. I. defuncti, qui de nobis tenuit in capit. in Ball. tua die quo obiit, & quæ occasione mortis ejusd. I. capt. sunt in manum nostram; Tibi præcipimus, quod Feod. illa & Advocat. præd. per sacrament, &c. diligent. extendi facias, quantum, viz. valeant per an. in omnibus exit. juxta valor. eorund', & Extentam illam distincte & aperte fact. nobis sub sigillo tuo & sigillis eorum per quos fact. fuer. sine dilatione mitt', & hoc Breve. Teste, &c.

And if a Lunatick or a Mad-man doth kill a man, or if a man doth kill a man by misfortune, or if an Infant of 8 years old doth kill a man; if they will sue a Pardon for the same, the use is, to sue a *Certiorari* to remove the tenor of the Record and Process into the Chancery, and thereupon to have a Pardon: and in the Register do appear several forms of such *Certioraries* to remove such Records, which a man may see there more fully, and therefore they are not here mentioned.

*Writ of Forcible Entry upon the Statute
of 8 H. 6.*

THE Writ upon the Statute of 8 H. 6. of *Forcible Entry* lies, where a man is disseised or put out of his Lands or Tenements with force, whereof he is seised as of an Estate of Freehold in Fee tail, or in Fee, or for Life; he may sue forth that Writ of *Forcible Entry* upon that Statute: or if he be disseised or put out of his Lands and Tenements peaceably, and afterwards the Disseisor or he who ousteth him doth keep and detain the Lands and Tenements with force, then he who is put out may sue that Writ if he will, and in that Writ he shall recover his damages and his costs treble for what he is found daminified by the Jury, and what he hath expended in that Suit.

If a man enter into any Lands and Tenements, and disseiseth another with force, and keepeth the Lands and Tenements

nements and detaineth them with force; then he who is ousted and disseised may have that Writ, altho' the words of the Statute are in the disjunctive, *scil.* Where a man is disseised with force, or where a man doth disseise one peaceably, and afterwards doth keep the Lands with force; because the intent of the makers of the Statute was to punish such force, whether it were upon the Entry and Disseisin, or upon the keeping and detaining of the Lands, &c.

E And note, that none can have or maintain that Action but he who hath a Freehold in the Lands or Tenements at the least; for Tenant for years cannot maintain the Action, because the words of the Writ are, *expulit & disseisivit*; and Tenant for years cannot be disseised, &c. And the form of the Writ is such:

F Rex Vic', salutem. Si A. fecerit, &c. tunc pone B, &c. ad respond' tam nobis quam prefat A. quare cum in Statuto in Parlamento apud Westm. anno regni Regis H. nuper Regis Angliæ 6. progenitor. nostri 8. tento, edit. inter cætera continetur, Quod si aliqua persona de aliquibus terris seu tenementis manu forti expulsa sit & disseis, vel pacifice expellat, & postea manu forti extrateneat, vel aliquod Feoffament. vel Discontinuatione inde post talem ingress. pro jure possessor. defraudando & tollend. aliquo modo fiat, habeat pars in hac parte gravata versus talem Diff. Assisam novæ diff. vel Breve de Transgr'; & si pars gravata per Assisam vel per Action. Transgress. recuperet, & per Veredict. vel alio modo per debit. Legis formam inveniat, quod pars Def. in terr. & tenement. vi ingress. fuerit, vel ea post ingressum suum per vim tenuerit, recuper. Querens dampna sua ad triplum versus Def' & ulter. Finem & redemption. nobis faciat: præd. B. præf. A. de Liber. tenemento suo in B. manu forti expulit & disseisivit, & eum sic expuls. & disseis. extratinet de eod', in nostri contemptum, & ipsius A. dampn. non modicum & gravam, ac contra form' Statuti prædict', & contra pacem nostram. Et habeas ibi nomina Plegior', & hoc Breve. Teste, &c.

G And the Process in that Writ is Attachment and Distress, and Process of Utlagary, &c.

H If a man entred with force in Lands or Tenements into which he hath Title and right of Entry, and put the Tenant of the Freehold out of those Lands or Tenements; now he who is so put out with force shall not maintain an Action of Forcible Entry against him who had title or right of Entry, because that that Entry is not any Disseisin of him: but he may indict him for this entering by force, and

[249] by this Indictment he shall be restored to his possession again; and that is by the Stat. of 8 H. 6. c. 9. And in this A
 Action of Forcible Entry the Plaintiff shall recover treble damages, as well for the occupying of the Lands, as for the first Entry therein. And a man may have a Forcible B
 Entry of a Rent, as well as of Lands.

And if a man entreth and disseiseth another with force, C
 and afterward the Disseisee re entreth again; yet the Disseisee may bring his Action of Forcible Entry, and recover his treble damages, although he be seised of the Land at the time of the Action brought: but if a man continueth three years in peaceable possession, without interruption, then he may hold the Lands with force, and shall not be punished for that force; and by the same Statute.

23 H. 8. f. 5.

And in the Writ of forcible entry, the Defendant may plead Not guilty, and it shall be a good Plea; but if the Defendant doth plead matter in Bar, yet he ought in the end of his Plea in Bar to traverse the Entry with force which is alledged, as to say, *Absque hoc* that he did enter with force, &c. but yet the Demandant or Plaintiff ought to answer to the special matter alledged in the Bar, without answering to the Traverse with force, &c.

17 H. 7. 17.

And if the special matter alledged in the Bar be found for the Defendant, he shall be excused, and the force shall not be enquired of; and if it be found with the Plaintiff, and against the Defendant, the Defendant shall be attainted of the force, and shall pay treble damages and costs, without enquiry of the force: and the same is the usage at this day. And one Joint-tenant, or Tenant in Common, may maintain this Action against his Companion, if he be put out with force, &c.

And if a man do enter with force, and doth detain with force any Lands or Tenements; the party may have his Action upon the Statute of Northampton, made An. 2. E. 3. c. 3. and the Writ shall be such:

Rex Vic', &c. Quia datum est nobis intelligi, quod quamplur. malefactores & pacis nostre perturbatores in Conventibus congregati, armati, & modo guerrino arraiati, apud C. acceder', & claus. & domos quorund. liegiarum nostrorum ibid. per vim & potentiam armat intrar', & res, redditus & proventus, ac alia bona sua quaecunque de quibuscunque possessionibus suis ibidem provenientes, capere consent', & asportare intendunt, & ad hoc parant, in nostri contemptu, ac quorundam de populo nostro ibid. terrorem & commotionem manifestam, ac contra form Stat. apud Northampton. de armis contra

contra pacem Domini Ed. nuper Regis Angliæ tertii, progenit. nostri, non portand. editi, & contra pacem nostram: Nos, Statutum prædict. inviolabilit. observar', & idem infringentes juxta vim & effectum ejusdem Stat. castigari facere volentes & puniri, tibi præcipimus, quod apud Villam de C. & alibi in Com. tuo ubi necesse fuerit, publice proclam', & ex parte nostra firmit. inhiberi fa', ne quis, cujuscunque Stat. sive conditionis fuerit, ibidem armatus contra pacem nostram ac form. Stat. præd. accedat, nec armatam potent. nec quicquam aliud ibidem seu alibi fac', per quod Pax nostra seu Stat. præd. lædi, vel popul. noster terreri, turbari, aut indebite gravari poterit quovis modo, sub pæna amissionis armorum suorum, & incarceration. corporum suorum ad voluntatem nostram, prout in Stat. prædict. plenius continetur. Et omnes illos quos post & contra Proclamation. & Inhibitionem præd. inveneris contraria facientes, vel per inquisitionem per te modo & form. debitis capiend. inveneris fecisse, una cum armis & armaturis suis secum invent', arrestar, & capi, & corpora ipsorum arrestator. in prisona nostra, quousque aliud à nobis pro deliberatione sua habueritis in mandat', salvo custodir. ac arma, & armaturas præd. appreciari, & nobis inde respond. fac': nos vero in Cancell. nostra sub sigillo tuo de nominibus arrestator. præd', ac de armis & armaturis suis & quæ & cujuscumque fuerint, & de pretio vel de vero valore eorund', ac de voto facto tuo in hac parte, redd. distinct. & aperte sine dilation. certiores, hoc breve nobis remitt. Teste, &c.

Writ of Mainprise.

G THE Writ of Mainprise lieth properly, where a man is taken for suspicion of Felony, or indicted of Felony, for the which thing by the Law he isailable, and he offereth sufficient Sureties unto the Sheriff or others who have authority to bail him, and he or they do refuse for to let him to Bail; then he who is so kept in Prison may sue forth such Writ:

Rex Vic', &c. Ex parte R. capti & detenti in Gaola nostra Glouc. pro quodam Latrocinio ejusdem equi apud S. ut dicitur, facto, unde coram te per quand. Inquisitionem ex officio tuo captam indictatus est, ut dicit', nobis est offensum, quod licet ipse tibi frequent. obtulerit suffic. Manucapt', qui eum manucaperent, juxta formam Stat. apud Westm. dudum editi, in quo continetur, quod de hujusmodi Latrociniiis coram Vic. vel Ballivis per Inquisitiones ex officiis suis captas indictati replegiabiles sunt, dum tamen bonæ fama sint; tu tamen Manu-
captiores

[250] *captores illos a præfat. R. recipere, & ipsum per Manucaptionem hujusmodi a Gaola prædict. hucusque deliberare distulisti, & adhuc differs, in ipsius R. assendum non modicum & gravamen, & vitæ suæ periculum manifestum, & cont. form. Stat. præd. & quia nolumus quod idem R. in prison. præd. contra formam Statuti præd. diutius detineatur, Tibi præcipimus, quod si idem R. bonæ famæ sit, & per Inquisitionem coram te ex officio tuo captam de Latrocinio præd. indictatus fuerit, ut præd. est, & pro eodem Latrocinio, & non alia occasione, in prisona prædict. detineatur, & invenerit tibi suffic. Manuceptores, qui eum manucapere voluerint habere coram Just. nostris ad Gaolam nostram prædict. deliberand. assignatis vel assignandis, in proxim. adventu eorund. pro Gaola illa deliberand., ad stand. recto de Latrocinio prædict. secundum Legem & consuetud. regni nostri Angliæ, tunc ipsum R. a prison. prædict. interim deliberari fac. per Manucaption. supradict., juxta form. Stat. prædicti; & habeas ibi nomina Manuceptor. illorum, & hoc Breve. Teste, &c.*

But note, that it is ousted by the Statute made *An. 28 E. 3. A. c. 4.* that the Sheriff shall not take the Indictments by Writs or Commission directed unto them. And see the Statute of *West. 1. cap. 15.* for those who shall be bailed.

And if a man be indicted of Felony before the Bailiffs of the Hundred, and put into the Gaol for the same, if he offer sufficient Sureties to the Bailiffs, and they will not Bail him, then he who is imprisoned may have such a Writ unto the Sheriff thus :

Rex Vic', &c. Ex parte I. nobis est ostens. ut cum ipse per quosd. æmulos suos de Latrocinio ejusd. bovis Ric. &c. apud R. factò, ut dic. coram Ball. F. de B. de Hund. suo de P. per Inquisitionem ex officio eorund. Ball. captam, indictatus, & ea occasione captus, & in prisona nostra de D. detentus existat; & licet idem I. frequent. sibi obtulerit sufficien. Manuceptores, qui eum manucaperent, juxta formam Statuti apud Westm. dudum editi, in quo continetur, &c. ut supra. Tibi præcipimus, quod si idem I. bonæ famæ sit, & per Inquisitionem coram eisd. Ballivis ex officio suo captam de Latrocinio præd. indictatus fuerit, ut prædictum est, & pro eod. Latrocinio, &c. ut supra, &c.

And there is another Writ for a man who is taken for suspicion of Felony, and kept in Prison : and another Writ for him who is arrested and kept in Prison for petty Larceny, &c. But this clause shall then be put into the Writ, *viz. Si de aliis Latrociniiis prius reſtati non fuerint* : but this clause, *dum tamen bonæ famæ sint* shall not be put in that Writ, where it is sued for him who is taken for petty Larceny.

And

And if a man who is of good fame be appelled by an Approver, for which cause he is arrested and kept in Prison; then he may sue a Writ to the Sheriff, to let him be Bailed upon good Sureties.

And so if a man be appelled by an Approver, and be taken and kept in Prison, and afterwards the Approver dieth; he may sue a Writ to the Sheriff to set him at liberty upon sufficient Bail, if he be not a notorious Felon, although he be not a man of good fame.

E And if a man be indicted as accessory to a murther, as by his assent and procurement, or receipt, &c. or of aiding or counselling, &c. and be taken for the same, he may sue a Writ to the Sheriff to take Bail of him, until the Principals be convicted or attainted, if they be of good fame: but the Stat. of West. cap. 15. doth not speak so largely as the Writs in the Register do, for the Statute doth not speak of Commandment, Abetment, or Consent, &c.

F And if a man be taken by the King's Commission, and kept in Prison for Felony, or evil doing, he may by his Friends put in Sureties in the Chancery, that he will appear before the Justices, &c. and be of good behaviour, &c. and that Body for Body; and thereupon he shall have a Writ out of the Chancery unto the Sheriff, or unto the Constable of the Castle where he is imprisoned, to set him at liberty, if he be imprisoned for that cause, and for no other.

G And if a man be indicted before Justices of Peace of Trespas, and imprisoned for the same by Process, he may sue a Writ out of the Chancery, directed to the Sheriff, to take Bail of him to appear before the Justices at the Sessions, and to set him at liberty: but the Justices of Peace may take Bail of him, and set him at liberty, if they so please.

H If a man be indicted of Trespas before the Justices of the Peace, and put in Prison therefore, he may sue a *Certiorari* to remove the Indictment into the King's Bench, directed to the Justices of Peace, and a *Habeas Corpus* to the Gaoler, that he bring the party at his costs before the King in his Bench such a day, &c.

I And if a man be indicted of Forestalling, and put in Prison for the same, he may sue a Writ out of the Chancery to the Sheriffs, to take Bail of him to appear before the Justices, &c. to answer the Trespas, and then to set him at liberty.

K And if a man sueth a Writ of Error upon false Judgment given against him in any City or Borough, where he is condemned

demned, and kept in Prison; he may sue a Writ out of the Chancery, directed to the Mayor or Bailiffs of the City or Borough, to take Surety of him to answer what shall be due to the King and to the party, if the Judgment be affirmed; commanding them for to set him at liberty.

[251] And so if a man sueth an Appeal of *Maihem* against another, and afterwards he is arrested at the Suit of the Defendant, or of another in any City or Borough, to the intent that he may not sue his Appeal; he may have a Writ out of the Chancery to the Bailiffs or Mayor, that he take Sureties of him to answer to the party there, and that they set him at liberty: and all those Writs appear in the Register.

And if a man be appelled of Robbery, he may sue a Writ out of the Chancery to the Sheriff, that he take Sureties of him to appear before the Justices, &c. and that he set him at liberty; and if he have not arrested him, that he do not arrest him, if the party offers to find such Sureties to the Sheriff, &c.

And if a man be sued in Debt or Trespass, and be arrested by *Capias* or *Exigent*, and kept in Prison, he may sue a Writ to the Sheriff out of the Chancery, to take Bail of him to appear at a day, &c. and that he set him at liberty, &c. But now by the Statute made *Anno* 23. *H. 6.* every Sheriff is bounden to let to Bail every one in his custody, who is arrested by Writ, Bill or Warrant, in any Action Personal, or upon Indictment of Trespass, if they offer reasonable Sureties to appear at the day, &c. in such places where the Writ, Bill, &c. is returnable, &c. but persons condemned, or outlawed, or excommunicated, or taken for Surety of the Peace, or Persons who are committed to Prison by the commandment of any Justice, and Persons wandring who refuse to serve, who remain in the Custody of the Sheriff, all those Persons are excepted, for the Sheriff ought not to let such Persons to Bail.

If a man be condemned in Trespass before Justices of the Peace, and be arrested and put into Prison in the custody of the Sheriff, he may sue a Writ out of the Chancery to the Sheriff, that he take Bail of him, and set him at liberty: and also he may have a Writ directed to the Justices of the Peace, commanding them to take Bail of him, and set him at liberty: or if the party do find Sureties in the Chancery to appear and stand right in Law, then he shall have a Writ directed to the Justices of Peace, or unto the Sheriff, to set him at liberty.

.. If

- D** If a man be bounden in a Statute-Merchant payable at a day certain, and at the day he pay part of the money, and hath a Release from the Conusee, of the residue, if the Conusee sue Execution, and arrest the party who hath the Release, then the Recognisor may sue in Chancery, &c. by his Friends, and find Sureties, Body for Body, that he shall appear such a day in the King's Bench, and pay the Money there, if he cannot otherwise be discharged; and thereupon he shall have a Writ to the Sheriff, reciting the whole matter, and how he hath found Sureties in the Chancery, as is aforesaid, commanding him for to set him at liberty; and thereupon the Sheriff ought for to set him at liberty; and if he will not so do, he shall have an *Alias*; and a *Pluries*, and an Attachment against the Sheriff, &c.
- E** And if a man be condemned in any Court, and he is taken in Execution, and afterwards he is removed by a *Habeas Corpus*, or a *Certiorari* in Chancery; he shall not be bailed, but shall be remanded to Prison, there to remain according to the Law, until he hath satisfied the party Plaintiff, &c.
An. 2 H. 5. cap. 2.
- F** And two Justices of the Peace, whereof one is of the *Quorum*, may let men suspected of Felony, or other persons who areailable, to Bail, until the next General Sessions or Gaol-delivery: but the Justices of Peace are bound there to certifie at the next General Sessions, or Gaol-delivery that Recognizance unto the Justices, &c. upon pain of forfeiture of 10 *l.* and that is by the Statute of 3 H. 7.
cap. 3.
- G** And he who is acquitted of Murther within the year at the King's suit, shall not be released out of Prison until he find Sureties to appear at any time the Justices will require him until the end of the year, &c. because the party may sue his Appeal after against him within the year, &c.
- H** And what Persons areailable, and what not, appeareth by the Statute of *West. 1. c. 15.*
And the Justices of Gaol-delivery may punish those who let men to Bail, who are notailable, by the Statute *de Fimibus, cap. 3.*
- I** And *An. 4 E. 3. cap. 2:* The Marshal of the King's house cannot let those to Bail who are indicted or appelled of Felony, who are committed to them, &c. but the Justices of the King's Bench may punish them, &c. And *Ann. 5 E. 3. cap. 8.* they cannot let to Bail those who render themselves

Writ of Diem clausit extremum.

at the *Exigent* in Felony, and are committed to the Marshal, nor by Bailly nor Baston; and if they do, they shall be imprisoned for half a year, and fined at the King's pleasure.

Writ of Diem clausit extremum.

THE Writ of *Diem clausit extremum* properly lieth, K
where the King's Tenant, who holdeth of him in *Capite*, as of his Crown, by Knight's Service, or in Socage, dieth seised, his Heir within age, or of full age; then that Writ ought to issue forth, and the same ought to be at the Suit of the Heir, &c. for upon that, when the Heir cometh of full age, he ought for to sue Livery of his Lands out of the King's hands: and the Writ is such:

[252] *Rex dilecti sibi W. de K. Escheatori suo in Com. Devon. salut. Quia W. de S. qui de nobis tenuit in capite, Diem clausit extremum, ut accepimus; Tibi precipimus, quod omnia terras & tenementa de quibus idem W. fuit seistus in dominico suo ut de feodo in Balliva tua die quo obiit sine dilatione cap. in manum nostram, & ea salvo custodiri fac', donec aliud inde preceperimus, & per sacramentum proborum & legal. hominum de Balliva tua, per quos rei veritas melius sciri poterit, diligent. inquiras, quantum terra & tenementorum idem W. tenuit de nobis in capite, tam in dominico, quam in servitio, in Balliva tua die quo obiit, & quantum de aliis, & per quod servic', & quant. terra & tenementa illa valent per annum in omnibus exitibus, & quo die idem W. obiit, & quis propinquior heres ejus sit, & cujus atatis: & inquis. inde distincte & aperte fact. nobis in Cancell. nostra sub sigillo tuo, & sigillis eor. per quos fact. fuerit, sine dilatione mittas, & hoc Breve. Teste, &c.*

4 Eliz. Dyer.
213. They
shall be on-
ly of the
Lands in
Socage in
Capite, and
not of the
Lands hold-
den of o-
ther Lords.

Stamf. 13.
Plow. Com.
204.

And if the King hath a Ward, and afterwards one who A
holdeth of the said Ward his Lands by Knights service dieth, his heir within age, or of full age; then a *Diem clausit extremum* after his death shall issue in this form;

Rex dilecti, &c. Quia I. de S. qui de hered. W. de O. defuncti, qui de nobis tenuit in capite, infra etatem & in custod. nostra existens, tenuit per servic. militare, Diem clausit extremum ut accepimus; Tibi precipimus, quod omnia terras & tenementa, &c. & per sacramentum, &c. quantum terrarum & tenementorum idem I. ten. de hered. pred. & quis propinquior heres ejus sit, &c. ut supra.

And if the heir dieth being in the custody of the King, B
then shall issue another Writ of *Diem clausit extremum* in this form:

Rex,

Rex, &c. Quia R. de H. filius & haeres I. de H. defuncti, qui de nobis tenuit in Capite, nuper dum infra etatem & in custod. nostra fuit Diem clausit extremum, ut accepimus; Tibi praecipimus, quod per sacramentum, &c. inquiras, quae terr. & quae tenementa per mortem praed. I. & ratione minoris etatis heredis praedict. I. ad manus nostras devener, & sic in manu nostra existunt, & quantum inde de nobis tenent in capite, & quantum de aliis, & per quod servitium, & quantum, &c.

- C And if the King's Tenant dieth who holdeth by Knights service, and his Wife be endowed, and the King hath the Wardship of the Lands for the Nonage of the Heir, and afterwards the Tenant in Dower dieth, the Lands being in Ward in the King's hands; then a *Diem clausit extremum* shall be sued in this manner.

Rex dilecto sibi N. de B. Majori Civitat. suae London', & Escheatori suo in eadem Civitate, salut. Quia E. quae fuit uxor I. de B. dudum defuncti, quae quasdam terras & quaedam tenementa de nobis tenuit in dotem de hereditat. praedict. I. quondam viri sui, Diem clausit extremum, ut accepimus; Tibi praecipimus, quod omnia terras & tenementa quae eadem E. sic tenuit in dotem de hereditat. praed. in Balliva tua, &c. per sacramt', &c. diligent. inquiras, quas terras & tenementa eadem E. sic tenuit in dotem de her. praed. in Balliva tua. die quo obiit, & quantum inde de nobis tenet in capite, & quantum de aliis, & per quod servic. &c.

- D Otherwise after the death of Tenant for life of Lands of which the King hath the Reversion in Ward:

Quia A. qui quasdam terras & quaedam tenementa de hered. E. consanguin. & hered. H. de P. defuncti, qui de Rege tenuit in capite, infra etat. & in custodia Regis existent', tenuit ad terminum vitae suae, Diem clausit extremum, &c. Tibi praecipimus, &c. Or thus; Quia A. qui quasdam terras & quaedam tenementa de nobis tenuit per Legem Angl. de hered. M. uxoris suae dudum defunctae, Diem clausit extremum; Tibi praecipimus, &c.

- E

- F And if Tenant for life, the Remainder to the King and his Heirs, dieth, the King shall have a *Diem clausit extremum* in this manner:

Quia A. quae fuit uxor, &c. qu. quasdam terras & quaedam tenementa tenuit ad vitam suam, & quae post mortem ipsius A. nobis & heredibus nostris remanere debent, Diem clausit extremum, &c. Tibi praecipimus, &c. quae eadem sic tenuit, &c. & quae post mortem, &c. remanere debent, &c. or thus; post mortem praed. B. ad manus nostras ratione minoris etat. praesat. her. deven', &c.

And

And there are divers other forms of Writs in the Register after the death of Tenant for life, or Tenant in Dower.

And if the King hath the Temporalties of the Bishop in his hands, and afterwards one who holdeth by Knights Service of those Temporalties dieth, his Heir in Ward to the King, then the *Diem clausit extremum* shall be in such form:

Rex, &c. Quia A. qui de Archiepiscopatu Cantuar. vacans, & in manu nostra existent, tenuit per servic. militare, Diem clausit extremum, &c. Tibi precipimus, &c. de quibus idem A. fuit seistus in dominico suo ut de feodo, &c. & tenuit de Archiepiscopatu præd. sine dilatione, &c.

And if the King hath an Idiot in his custody, and afterwards the Idiot dieth, the Writ of *Diem clausit*, &c. shall be thus:

[253] *Rex, &c. Quia B. de C. nuper Fatuus & Idiota, cujus terræ & tenementa ratione Fatuitatis ejusdem in manu nostra existunt, Diem, &c. ut accepimus; Tibi precipimus, quod per sacramentum, &c. diligenter inquiras quæ terræ & quæ tenementa ratione Fatuitatis præd. B. in manum nostr. capta fuerunt, & adhuc in manu nostra existunt, & de quo vel de quibus tenentur, & per quod servicium, & quantum terræ ille valent, &c. & quis propinquior, &c. & Inquisic. &c.*

And if a Writ of *Diem clausit extremum* be sent to the Escheator, and the Escheator be removed from his Office, or dieth before he make the enquiry, &c. then shall issue forth another Writ of *Diem clausit extremum*, which shall be such:

Rex, &c. Cum nuper dat. nobis intelligi, quod I. de B. qui de nobis tenuit in capite, Diem clausit, &c. præceperimus dilecto nobis W. de O. nuper Escheatori nostro in Com. præd. quod omnia terras & tenementa, &c. [ut supra, mutatis mutandis] ac idem W. ab Offic. præd. jam sit amotus, per quod Executio brevis nostri præd. fieri non potest: Nos super præmiss. volentes certior, tibi precipimus, quod per sacramentum, &c. diligenter super præmiss. fac. Inquisic, & eam distincte, &c. Teste, &c.

And another form of Writ in this manner:

Rex dilect. &c. Cum nuper dat. nobis intelligi, quod I. de B. qui de nobis tenuit in capite, Diem clausit, &c. præceperimus dilecto & fideli nostro H. de B. nuper Escheatori nostro in eodem Com, quod omnes terras, &c. sine dilatione caperet in manum nostram, &c. donec aliud inde præcepissem, & per sacramentum, &c. inquireret quantum terræ, [ut in primo Brevi] ac idem H. antequam præd. Breve fuerat execut, ab Officio præd. fuerat amotus: Nos volentes super præmiss. plenius certiorari, tibi precipimus, quod super articulis prædict. & eorum singulis diligenter facias Inquisic, & eam distincte & aperte factum, &c. ut supra.

But

But if the first Escheator do make Inquiry by force of the Writ, and afterwards dieth before the Inquisition be returned into the Chancery, &c. then a *Cartiorari* shall be awarded against his Executors, to certifie the same Inquisition; because it is a good matter of Record when it is found, and the Jurors have put their Seal unto the same.

If the King's Tenant, who holdeth of him by Knights service, dieth, his Heir within age, and no Writ is awarded within one year after his death, then, after the year is past a Writ called a *Mandamus* shall issue forth; and that Writ doth not vary in words from the Writ of *Diem clausit extremum*; and the Writ is such:

Rex dilecto sibi W. de E. Escheatori suo in Com. B. salutem. Precipimus tibi, quod per sacramentum proborum & legal. hominum de Balliva tua, per quos, &c. diligenter inquiras quas terras & que tenementa I. de B. tenuit de nobis in capite, tam in dominico quam in servicio, in Balliva tua die quo obiit, & quantum de aliis, & per quod servitium, & quant. terre & tenementa illa valeant per annum in omnibus exitibus, & quo tempore idem I. obiit, & quis propinquior, &c. & cujus aetatis, & quis vel qui terras & tenementa illa a tempore mortis præd. occupavit vel occupaverunt, & exitus & proficua inde percepit vel perceperunt, quo titulo, & qualiter, & quomodo, &c. & Inquisitionem, &c.

C And note, that if a man sue a Writ of *Diem clausit extremum*, it ought to be sued within the year, and after the year he shall have that Writ of *Mandamus*, and not a *Diem clausit extremum*. And if a man sue forth a Writ of *Diem clausit extremum*, and he loseth the Writ, or the same is taken from him with force against his will, he shall not have a new *Diem clausit*, &c. But if he hath a *Diem clausit*, &c. and the heir be found within age, and that the King hath title to him, because that his Ancestour held of the King at the time of his death by Knights service, and afterwards the heir dieth being in Ward to the King, and no Writ of *Diem clausit extremum* within the year after his death; yet there a *Mandamus* shall not be awarded after the year of the death of the Ward, but a new Writ of *Diem clausit extremum*, because the heir died in Ward to the King; and that is by the Rule of the Register.

D Or if the King's tenant who holdeth of the King by Knights service in chief dieth, the heir may have a special Commission directed to certain persons, to enquire what Lands, &c. his Father held the day of his death, &c. and that special Commission shall be as good for the heir as a Writ of *Diem clausit extremum* after the death of his Ancestour. And upon such

S f

Com-

Commission and Inquisition taken thereupon, and found and returned in the Chancery, the Heir at full age shall have his Livery as well upon a Writ of *Diem clausit extremum* sued forth, &c. But upon a general Commission to enquire of all Wards, &c. the Law is otherwise; for the Heir upon such a Commission and Inquisition returned shall not have Livery.

When the Heir who is in Ward to the King by reason of Lands holden in *Capite* cometh to his full age then he shall have a Writ directed to the Escheator, to prove his age, before he shall have Livery of his Lands, and the Writ is such:

Rex dilecto sibi I. de B. Escheatori suo in Com. B. salut. Quia A. de B. qui M. sororem & unam hered. R. functi, qui de Domino Ed. nuper Rege Angliæ, Avo nostro tenuit in Capite, duxit in uxorem, dicit præf. M. plenæ ætatis esse, & petit a nobis terras & tenementa quæ sunt de hereditate ipsius M. & quorum una pars in manu nostra, & alia pars in custod. I. de H. ex commissione dicti avi nostri, usque ad legitimam ætatem hered. ejusdem existunt, sibi reddendâ, per quod volumus quod eadem M. qua apud G. in Com. N. nata est, & in Ecclesia ejusdem villa baptizata fuit, ut dicitur, ætatem suam probet coram te: Tibi præcipimus, quod ad certum diem & locum, quos ad hoc provide- ris, probationem illam per sacramentum tam militum quam proborum & legalium hominum de Balliva tua, per quos probatio illa capi & veritas ætatis prædict. melius sciri poterit & inquiri, capias, & scire fac. præf. I. quod tunc sit ibi, ad ostendend. si quid pro se habeat vel dicere sciat, quare præd. A. & prædict. M. ut illi quæ plenæ ætatis est, si plenæ ætatis sit, terras & tenementa præd. reddere non debeamus; & Probationem illam sic captam nobis sub sigillo tuo, & sigillis eorum per quos capta fuerit, sine dilatione mittas, & hoc Breve. Teste, &c.

And by that Writ it appeareth, that the Writ of *Ætate probanda* shall be directed unto the Escheator of the Countrey where the Heir was born, and not where the Lands of the Heir lie: but yet it seemeth reasonable that he may sue it where the Lands lie; for it may be that he was born where the King's Writ doth not run, or in Ireland, or beyond the Sea, as in *Calais*, &c.

There is another form of Writ thus:

Rex, &c. Quia M. de P. filius & heres F. defuncti, qui de nobis tenuit in capite, dic. se plenæ ætatis esse, & petit a nobis terras & tenementa quæ sunt de hereditate sua, & in custodiam nostram usque ad legitimam ætatem hered. præd. sibi reddi, per quod volumus, &c. [utque ibi, melius sciri poterit & inquiri, capias, & tunc sic] Et probationem illam, &c. ut supra.

There is another form when the King committeth the Ward

Ward during his Non-age, then when he will sue an *Ætate probanda*, he ought to make mention of the same Commitment:

A And if a man be in Ward unto the King by reason of the Temporalities of a Bishoprick in the King's hands, when the Heir cometh of full age he ought for to sue forth an *Ætate probanda*; and the Writ shall mention the whole matter; and yet he doth not hold of the King *in Capite*.

And when the Heir hath proved his age, and the Writ is returned, then he ought to do his Homage to the King, or agree with the King for the respiting of the Homage, and he shall have such Writ:

B Rex eidem Escheatori, &c. Scias quod cepimus Homagium I. de H. filii & hæredis B. de H. defuncti, de omnibus terris & tenementis que idem B. pater suus tenuit de nobis in capite die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi præcipimus, quod accepta Securitate a præfato I. de rationabili Relevio suo nobis solvendo ad Scaccarium nostrum, eidem I. de omnibus terris & tenementis prædictis, & de quibus præfatus B. pater suus fuit seisit in dominico suo ut de feodo in Balliva tua die quo obiit, & que occasione mort. ejusdem B. capta sunt in manum nostram, plenam Seisin. habere fac; salvo jure cujuslibet, & salva Matildæ, que fuit uxor B. rationabili Dote sua, ipsum de terris & tenementis præd. secundum legem & cons. regni nostri Angliæ contingens, & per nos assignand, Teste, &c.

C And the Writ aforesaid lieth, where the Heir was of full age at the time of the death of his Ancestor, and sueth his Livery: but if the Heir were in Ward, and hath proved his age, then he shall have a Writ thus:

Rex, &c. Quia N. de E. filius & hæ. B. de C. defuncti, qui de Domino Edward. nuper Rege Angl', Avo nostro, tenuit in capite, etatem suam coram te sufficient. probavit, sicut per Probationem de mandato nostro captam & in Cancell. nostram retorn, est compertum; ceperimus Homagium ipsius N. de omnibus terris & tenementis que idem R. pater suus tenuit de dicto Avo nostro in capite die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi præcipim', quod eidem N. de omnibus terris & tenementis præd, & de quibus præd. R. pater suus fuit seisitus in dominico suo ut de feodo in Balliva tua die quo obiit, & que per mortem ejusdem R. in manum dicti Avi nostri capta fuer', & in manu nostra sic capta existunt, plenam Seisin. habere fac. salvo jure cujuslibet. Teste, &c.

D And if the Husband seised in fee in right of his wife be outlawed of Felony, for which the Lands came into the King's hands, and afterwards the Husband who is outlawed dieth; a Writ of Diem clausit extremum shall be awarded, which shall be such:

Si 2

Quia

Quia A. cujus terr. & tenementa, quæ ipse tenuit de jure & hereditate N. nuper uxoris sue adhuc superstit', ad manus Domini Edward. nuper regis Angliæ quarti post Conquest', occasione cuiusd. Utlagar. in ipsum A. pro quadam Felonia unde indictatus fuit, ut dicitur, promulgat', devener', & in manu Domini Henrici, &c. patris nostri, extiterunt, & sic in manu nostra existunt, Diem clausit extremum, &c. Tibi præcipimus, quod per sacramentum, &c. inquiras quæ terra & quæ tenementa ration. Felon. præd. ad manus ipsius nuper Regis devener', & adhuc in manu nostra sic existunt, & de quo vel de quibus tenentur, & per quod servitium, & qualiter, & quomodo, & quantum terr. & tenementa illa valent per ann. in omnibus exitibus, juxta verum valor. eorund', & quis vel qui terras & tenementa illa a tempore peccationis Felon. præd. occupavit vel occupaver', & exitus & proficua inde percepit vel percep', quo titula, qualiter & quomodo: & Inquisit', &c.

[255]

Quæ Plura.

THE form of the Writ of Quæ plura is such :
 Rex Escheatori suo, &c. salut. Quia dat. est nobis intelligi quod A. defunct', qui de nobis tenuit in capite, tenuit die quo obiit plura terr. & tenementa in Com. prædict. quam in Inquisition. ind. post mortem præd. A. de mandato nostro capta, & in Cancellar. nostrâ retornat', specificatur: Tibi præcipim', quod per sacramentum proborum, &c. inquiras quæ plur. terras & tenementa idem A. tenuit in Com. prædict. die quo obiit, & de quo vel de quibus illa plura terr. & tenementa teneantur, & per quod servic', & quantum valeant per ann. in omnibus exitibus; & Inquisitionem, &c.

The Writ of *Melius inquirendo*, lieth, where the first Office is found by virtue of a Writ of *Diem clausit extremum*, the which Office wanteth certainty in divers points, as in the tenure of divers Lands, or in the value of any of them, &c. then shall issue forth such Writ of *Melius inquirendo*: but if the first Office be found by the Escheator *virtute officii sui*, and not by virtue of any Writ or Commission, and the Office wanteth certainty in divers things, as before; then a *Melius inquirendo* shall not issue forth, but the Office and Inquisition returned shall be as void, because it is not found by virtue of any Commission or Writ, but only *ex officio* of the Escheator, without any command to him to do the same; and therefore the same shall be taken as void, if it want certainty in any point.

Melius

Melius inquirendo.

C **T**HE form of the Writ of *Melius inquirendo* is such :
Rex Escheat', &c. salut. Cum per quandam Inquisic. cor-
ram A. Escheatore nostro in Com. præd. de mandat. nostro capt. &
in cancell. nostra retornat', sit compert', quod N. defunctus tenuit
divers. terras & tenement', cum pertin. in Com' præd'. & quis
propinquior hæres ejusdem N. sit ex parte patris sui Juratores
Inquisitionis prædict. ignorant. tamen ex parte R. matris prædict.
N. fil. W. B. est ejus hæres propinquior, & ætatis viginti unius
annorum & amplius ; & quia in Inquisitione prædict' quis pro-
pinquior hæres ipsius N. existat minime specificat' ; Tibi præcipi-
mus, quod per sacrament', &c. inquiras quis propinquior hæ. præd.
N. existit, qualiter & quomodo : & Inquisitionem, &c.

D There is another form of Writ of *Melius inquirendo*, because he doth not specifie in the Inquisition what Estate the Tenant had in the Lands ; or because he doth not shew in the Office of whom or of who the Lands were holden ; or because he doth not mention in the Writ the true value, and the K. is informed that the Lands are of greater value than is certified by the Office. And note that a *Melius inquirendo* shall be awarded upon a surmise made in Court, that the Lands are of greater yearly value than is declared by the Office ; and upon like reason upon a surmise made, that they are holden by other Services, or that the Tenant was seised of other Lands or other Estate than is mentioned in the Office, a *Melius inquirendo* shall be awarded.

Writ of Livery.

E **T** Here is another form of Writ of Livery, where the King's Tenant in *Capite dieth*, his Heir within age, and the King seiseth the Ward, and afterwards that Heir dieth within age, and in Ward to the King, for which the Lands come unto his Heir who is within age, and in Ward to the King ; now when that Heir cometh of full age, he shall have a Writ of Livery in this form :

Rex dilecto, &c. Escheatori suo in Com. I. salut. Quia I.
frater & her. S. filii & her. I. S. defuncti, qui de nobis ut de
Honore H. in manu nostra existent. tenuit per servic', reddend. ad
Wardam Castri Dover. decem solid. per annum, ætatem suam cor.
Roger. de W. nuper Escheat. nostr. in Com. præd', suffic. probavit.
sicut per Probat. illam de mandato nostro capt', & in Cancell.
nostram retorn', est compertum ; cepimus Homagium & Fidelita-

tem ipsius. I. fratris S. de omnibus terris & tenem. quæ præd. I. S. pat. tenuit de nobis ut de Honore pd. die quo obiit, & quæ post mortem præd. I. S. patris, & ratione minoris ætatis ipsius S. qui quidem S. dum infra ætatem & in custodia nostra fuit diem clausit extremum, ad manus nostras devenit, debet, & eidem I. fratri S. omnia terr. & tenem. illa cum pertin. reddidimus. Et ideo tibi præcipimus, quod eidem I. fratri S. de omnibus terris & tenem. præd. cum pertin. & de quibus præd. I. S. pater fuit seisit. in dominico suo ut de feodo in Ball. tua die quo obiit, & quæ per mortem ipsius S. patris, & ratione minoris ætatis ipsius S. ad manus nostras devenit, & sic in manu nostra ratione minoris ætat. ejusdem I. fratris S. adhuc existunt plenam Seisnam habere. fac', salvo jure cujuslibet. Teste, &c.

[256] And when an Heir shall have Livery at his full age, and holdeth one Manor in Capite of the King by Knights Service, and holdeth other Lands in several Counties of others, then a writ shall issue to the Escheator of the County where he holdeth in Capite; and the form shall be such: *Scias quod cepimus Homagium, &c.* And the Writs to other Escheators being thus: *Cum ceperimus Homagium, &c.*

21 E. 3. 41. A
ac. Of the And it appeareth by the Writ before, that to hold Land
Honour of Dover shall be a Tenure in Capite, and by Knights Service;
Berkham- and it may be that in ancient time he should guard the Castle,
stead. So 29 and that now the King hath taken Rent for the same, and
H. 8. 24. yet the taking of the Rent doth not alter the nature of the
Tenure. *Quere.*

B
If two men by Licence purchase Lands holden of the King in Capite, and afterwards one of them dieth, the other shall have the Lands *cum exitibus* out of the King's hands upon the matter found by Inquest; but by the Register he ought to shew the Licence in the Chancery.

4 Eliz. Dyer C
213. rule ac. And if the King's Tenant who holdeth in Socage dieth, his Heir of the age of 14 years and more, and the King seisseth the Lands, he ought for to sue Livery of them. But it seemeth the King ought not for to seise the other Lands which he holdeth of other Lords by other Services, &c. and if he do, the other Lords shall have a writ of *Amoveas manum*, which is called an *Ouster le main, una cum exitibus, &c.* so as they shall have the issues and profits thereof which were taken by the King, and the form of the Writ is such:

Rex dilecto sibi A. Escheatori suo, &c. Quia accepimus per Inquisit. quam per te fieri fecimus, quod I. de T. defunctus tenuit in dominico suo ut de feodo, die quo obiit, unum mesuagium & unam bovata. terre cum pertin. in K. de nobis in capite, ut de Honore

Honore Abbatiæ Mariæ in manu nostra existent', per fidelitatem & per servitium trium solidorum & novem denar. nobis annuatim reddend', & quod non tenuit aliqua alia terras & tenementa de nobis in capite ut de Corona in Balliva tua die quo obiit, per quod custod. terr. & tenement. quæ fuer. præd. I. die præd. ad nos ad præf. debet pertin. & quod tenuit die prædict. divers. alias terras & tenementa de diversis dominis pro divers. servic'; quodque N. filius pd. I. est hæ. ejus propinquior, & ætatis sexdecim annorum & amplius; cepimus Fidelitatem ipsius N. de mes. & terris præd. & ea ei reddidimus. Ideo tibi præf. quod accepta Securitate a præf. N. de rationabili Relevio suo nobis solvend. ad Scaccarium nostrum, eidem N. de mesuag. & terr. præd', quæ occasione mortis ipsius I. cepisti in manum nostram, plenam Seisinam habere facias, salvo jure cujuslibet: de aliis vero terris & tenementis, quæ præfatus I. tenuit de aliis dominis in Balliva tua die quo obiit, quæ similiter occasione mortis prædicti I. cepisti in manum nostram, te ulterius non intromittas, salvo jure nostro & ulterius cujuscunque exitus, si quos de terris & tenement. quæ de aliis dominis sic tenent. perceperis, illis ad quos pertinent liberes.

And by this Writ it appeareth, that the Heir in Socage being of full age at the time of the death of his Ancestor shall have *Livery cum exitibus*; but if he were within the age of 14 years at the time of his Ancestor's death, his *prochein amies* must sue an *Ouster le main cum exitibus*: But the other Lords shall have an *Ouster le main* for the Lands holden of them by Knights service *cum exitibus*.

D And if the King hath the custody of an Idiot, and of his Lands, which are holden of the King in *Capite*, and the Idiot dieth, and his Heir be of full age; the Heir shall have a writ of Livery in this form:

Rex Escheatori, &c. Quia accepimus per Inquisic. quam per te fieri fecim', quod diversa terr. & tenementa cum pertin. in O. in manum domini Ed. quondam Regis Angl' avi nostri, ration. Fatuitatis & Idiot. W. de P. jam defuncti capta fuer. & in manu nostra sic existunt, & quod eadem terr. & tenement. tenentur de nobis in capite, ut de Honore Abbatiæ Mariæ in manu nostra existent. per servitium octavæ partis unius feodi milit', & fac' Sect. ad Wapentag nostrum de Holdernef. de tribus septiman. in tres, ac reddendo ad Wardum Castri nostri de Skiptron. ad medium Quadragesim. decem & septem denarios; quodque Galfridus, filius Will. de Redmain consanguineus præd. Will. est hæres ejusdem Will. propinquior, & plenæ ætatis; cepimus Fidelitatem ejusdem Galfrid. de omnibus terr. & ten. pd. & illa ei reddidimus, ac Homag. ejusd. Galfrid. usque ad Festum

45 E. 3. 19.
35 H. 6. 52.
Stam. Pre-
rogat. 13.

Paschæ proxim. futur. de gratia nostra speciali respectuamus : Et ideo tibi præcipimus, quod accepta Securitate a præfat. G. de rationabil. Relevio suo nobis reddend. ad Scaccar. nostrum, eidem G. de omnibus terris & tenement. pred. in manu nostra exist. plenam Seisin. habere fac', salvo jure cujuslibet. Teste, &c.

And when the Heir in Ward unto the King is of full age, E he shall have a Writ out of the Chancery unto the Keeper of the privy Seal, testifying that he is of full age ; and thereupon he shall have a privy Seal unto the King's Chamberlain to receive his Homage : and when he hath taken his Homage, he shall have a Writ from the Chamberlain to the Chancellor, testifying that he hath taken his Homage ; and thereupon he shall have a Writ of Livery. And all this matter appeareth at large in the Abridgments, in the title Livery, which see there.

And if three Coparceners be in Ward to the King, the F Coparcener who first cometh of age shall sue Livery, and shall have Partition made thereupon.

And if an Heir female be in Ward to the King, and holdeth of other Lords in Socage ; now when she cometh of G the age of 14 years she shall not sue Livery of the Lands holden in Socage, but she shall tarry until her age of 16 years, if she be not married before that age, for she shall

[257] sue Livery but once for all her Lands, &c.

And if the Heir of full age sueth his Livery, and omitteth A any parcel of his Inheritance, as an Advowson, or a Reversion, or one acre of Lands which is not found by the Writ of *Diem clausit extremum*, and thereupon sueth his Livery ; if it be found afterwards by another Office, that his Ancestor died seised of that Advowson, Reversion, or acre of Land, which was not found by the first Office upon which he sued his Livery before, then the King may reseise all the Lands, &c. and the Heir shall answer the K. for all the Rents, issues and profits received in the mean time by the Heir, &c.

If the King's Tenant holdeth by Knight's Service and in B *Capite*, and also holdeth other Lands of the Archbishop of Canterbury by Knight's Service, and dieth seised, his Heir within age ; the King shall have the Lands holden of him in Ward, and the Archbishop shall have the other Lands holden of him in Ward : and that is by the Statute of *Prærogativa Regis, c. 1.* And if the King seiseeth all the Lands, the Archbishop shall have an *Ouster le main cum exitibus*.

And if the King's Tenant who holdeth in *Capite* and C by Knight's Service, dieth seised, and a stranger doth abate, for which the Heir at full age recovereth by Assise of Mort-
dauncestor ;

ancestors; yet he ought for to sue his Livery, and to do his Homage, and the Abator shall answer the King the mean profits and issues received. And the Writ de Ætate probanda may be directed to certain Commissioners to enquire of the age of the Infant, as well as unto the Eſcheator, and the form of the Commission is such :

Commission pro Ætate probanda.

D **R**EX dilectis, &c. Sciatis quod assignavimus vos ad inquirend. per sacramentum tam militum quam aliorum proborum & legal. hominum de visn. de N. in Com. Linc', si I. filius & heres B. apud N. natus, & in Ecclesia ejusdem Ville baptizatus, & qui ratione minoris etatis sue in custodia nostra existis, plen. etatis sit, ut dicit, necne. Et ideo vobis mandamus, quod ad certos diem & locum, quos ad hoc provideritis, Inquisitionem illam faciatis, & illam distincte & aperte fact. nobis in Canc. sine dilatione mittatis, & hoc Breve. Mandavimus enim Vic' nostro Linc', quod ad diem & locum quos ei scir. fac. venire fac', &c. In cujus rei testimonium, &c. And thereupon a Writ shall be sent to the Sheriff to return an Empannel before the Commissioners at a certain day by them appointed. And the Writ shall be such :

Rex Vic. &c. Præcipimus tibi, quod sum. per bonos Sum. xii. tam milites quam alios probos & legales homines de visn. de N. quod sint coram dilectis & fidelibus nostris A. B. & C. & hiis quos sibi associavimus, ad certos diem & locum quos iidem A. B. & C. tibi scire faciant, parati sacramento recognoscer' si F. filius & heres D. apud N. natus, & in Ecclesia ejusdem Vill. baptizatus, qui ratione minoris etat. sue in custodia nostra existit, plenæ etatis sit, ut dicit, necne; & interim ad præd. Eccles. & Villam accedant, & veritatem etatis præd. diligent. inquirent: & nomina eorum imbrevari fac'. Et scire fac' E. & S. custodibus terre præd. heredis, quod tunc sint ibi ad audiend. illam Recogn', & ad ostendend', si quod obſtare debeat quar. præd. I. terras & tenementa sua habere non debeat; & habeas ibi nomina illorum duodecim, & hoc Breve. Teste, &c.

E And thereby it appeareth, that if the King hath committed the Wardship of the Land unto another, that the Committee shall be warned to be there; but if the King hath the Lands in his own hands, then that clause, *Et scire facias* E. & S. Custodibus, &c. shall be omitted out of the Writ.

F And by the Rule of the Register, a Woman shall do Homage and Fealty, and shall pay a Relief when she sueth her Livery, if she be of full age at the time of the death of

her Ancestors; and if she hath a Husband, if they have issue when they sue Livery, then the Husband shall do the Homage and Fealty; but if they have no issue, then the Husband shall do only Fealty.

And if two Joynt-tenants be, who hold of the King by License of Purchase, and one of them dieth, the other shall have an *Ouster le main cum exitibus*: but if the Purchase be made without License, then not, because that the King shall seise the Lands for the Alienation without License.

And if the King's Tenant hath Lands in several Counties, H some holden of the King, and some of other Lords the Writ of Livery shall be directed unto the Escheator of that County where the Land which he holdeth of the King in *Capite* lieth, and the Writ shall begin, *Scias quod cepimus Homagium*, &c. and he shall have Writs unto the Escheators of the other Counties, and the Writ shall begin thus, *Cum ceperimus*, &c.

Writ of Livery post mortem Patris & Matris.

WRIT of Livery after the death of the Father and Mother, &c. lieth where the Father and Mother hold severally Lands in Fee of the King in *Capite*, and they die, their Heir of full age, he may sue any Writ of Livery to have Livery of the Lands of them both, and is not bounden to sue several Writs, as severally Heir to them. And the form of the Writ is:

[258] *Rex dilect. sibi N. de W. Escheat. suo in Comit. S. salut. Sciatis quod cepimus Homagium, & Fidel. R. de B. filii & hered. R. de B. che'r. & I. uxoris ejus defunct. nobis debita pro omnibus terris & ten'tis que pref. R. & I. tenuerunt de nobis in capite diebus quibus obierunt, & ei terras & ten'ta illa cum pertin. reddidimus: & ideo tibi precipimus, quod accepta Securitate de pref. R. de ration. Relevio suo nobis solvend. ad Scacc. nostrum, eidem R. de omnibus terris & ten'tis pred. cum pertin. in Ball. tua, & de quibus pred. R. & I. fuer. seisi in dominico suo ut de feod. in Ball. tua dieb. quib. obierunt, & que post mortem pred. R. & I. capta sunt in manum nostram, plen. Seisin. habere fac. salvo jure cujuslibet. Teste, &c.*

Writ of Livery after the death of Tenant by the Courtesie.

THere is another form of Writ, after the death of Tenant by the Courtesie thus:

Rex dilect. sibi Escheat. suo in Com. Linc. &c. Sciatis quod cepimus

cepimus Homag. G. de N. filii I. de N. defuncti, de omnibus terris & ten'tis que idem I. tenuit per Legem Angl. die quo obiit, ut de jure N. nuper uxor. ejus jam defuncta, que de nobis tenuit in capite, matris præd. G. cujus hæc. ipse est, nobis debet, & terras & tenementa illa ei reddidimus: & ideo tibi præcipimus, quod accepta Securitate ab eodem G. de Relevio suo nobis solvend. ad Scaccarium nostrum, eidem G. de omnibus terris & tenementis præd. cum pertin. que per mortem pd. I. capta sunt in manum nostram, plenam Seisnam habere fac. salvo jure cujuslibet. Teste, &c.

And thereby it appeareth, that the Tenant by the Courtesie shall have the Lands after the death of his Wife, without suing an *Onster le main* for those Lands holden of the King, but that the Heir after his death shall sue his Livery for them, &c. because that the Tenant by the Courtesie doth remain Tenant to the King.

And if a man have Lands which are held of the King in *Capite* by the Courtesie, and he hath other Lands in Fee, and dieth; his Heir shall sue Livery as well for the Lands whereof the Tenant was seised in Fee, as for the Lands which he held by the Courtesie, altho the Lands of which the Tenant by the Courtesie was seised in Fee were not holden of the King in *Capite*, &c. because that as well those Lands are seised into the King's hands, as the Lands which he held by the Courtesie; and the Writ shall be such:

Rex dilecto sibi, &c. Escheat. in Com. Eborac. salutem. Scias quod cepimus Homag. & Fidel. G. filii & hæredis W. de S. & I. que fuit uxor ejusdem W. de S. defunctor, de omnibus terris & tenementis que præd. W. de S. pater suus tenuit tam per Legem Angl. de hereditate prædict. I. quond. uxoris sue post mortem ipsius I. quam in dominico suo ut de feodo die quo obiit, & ei terras & tenementa illa reddidimus; & ideo tibi præcipimus quod accepta Securitate a præfat. G. filio de rationabili Relevio suo nobis solvend. ad Scaccarium nostr. eidem G. filio W. de S. de omnibus terris & tenementis prædict. cum pertin. & que prædict. W. de S. pater suus tenuit tam per Legem Angl. post mortem prædict. I. quond. uxoris sue, quam in dominico suo ut de feodo in Ball. tua die quo obiit, & que post mortem ipsius W. de S. capta sunt in manum nostram, Seisnam habere fac. salvo jure cujuslibet. Teste, &c.

And if the King's Tenant dieth, and after his death his Wife be endowed, then after the death of the Tenant in Dower, the Lands which she held in Dower shall be seised into the King's hands, and the Heir shall sue Livery of them. And the Writ shall be such:

Writ

Writ of Livery after the death of the Tenant in Dower.

REX dilecto sibi T. de S. Escheatori suo in Com. Ebor^s, salutem. Scias quod cepimus Homagium & Fidelitatem dilecti & fidelis nostri R. Baron. de F. nobis pro omnibus terris & tenementis que A. que fuit uxor R. de N. quondam uxor R. nuper Baronis de F. post mortem predicti. R. nuper Baronis de F. primi viri ipsius A. avi ipsius R. nunc Baronis de F. de nobis tenuit in capite die quo obiit, debet, & ei terras & tenementa illa cum pertin. reddidimus: & ideo tibi precipimus, quod accepta Securitate a pref. R. nunc Barone de F. de rationabili Relevio nobis solvend. ad Scaccarium nostrum, eidem R. nunc Baroni de F. de omnibus terris & tenementis pred. cum pertin. que prefas. A. ten. in dotem post mortem pred. R. viri sui, avi pred. nunc Baroni, de hereditate predicti. in Ball. tua die quo obiit, & que post mortem predicti. A. accept. sunt in manum nostram plenam Seisnam habere fac; salvo jure cujuslibet. Teste, &c.

And by that it appeareth, that Tenant in Dower who is endowed in the Chancery, &c. of Lands holden of the King in capite, or of other Lands which are in the Kings hands by the death of his Tenant, that she shall hold them of the King, and the Heir shall have Livery of those Lands after her death: yet it seemeth that the Reversion of those Lands which she holdeth in Dower remaineth not in the King, but in the Heir; and if she commit Waste, the Heir shall punish the Waste.

There is another form of Writ of Livery, after the death of the King's Tenant, who holdeth parcel in Fee, or parcel in Tail or for Life, thus:

Writ of Livery after the death of Tenant in Tail and Tenant for life.

REX dilecti, &c. Escheatori suo in Com. Salop. & March. Wallie eidem Com. adjacent. salutem. Quia cepimus Homag. & Fidelitat. dilecti & fidelis nostri I. de B. filii & hered. I. de B. senioris, de omnibus terris & tenementis cum pertin. que idem I. tenuit de nobis in capite, tam in feodo quam ad termin. vite, die quo obiit, & que post mort. dicti I. patris dicto I. filio pertin. descendere, vel eid. I. filio & S. ux ejus & hered. de corpor. suis exsuntibus debent aliquant. reman, & ei terras & tenementa illa reddidimus: ideo tibi precipimus, quod accepta Securitate a pref. I. de rationabili Relevio suo nobis solvend. ad Scaccar. nostrum, eidem I. filio de omnibus terris & tenemen-

tenement. præd. cum pertin', & de quibus præd. I. pater suus fuit seiste. In dominico suo ut de feodo talliato, quorum Reversio ad dict. I. filium pertinet, in Balliva tua die quo obiit, & quæ per mort. ejusd. patris sui capta sunt in manum nostram, plenam Seisinam habere facias, salvo jure cujuslibet. Teste, &c.

And if Tenant in tail holdeth of the King in capite, and dieth, the Heir then of full age, he shall have such Writ of Livery.

Writ of Livery for the Heir in tail.

A **R**EX, &c. Scias quod cepimus Homag. & Fidelitat. dilect. nobis W. &c. filii & hæredis W. de B. defuncti, de omnibus terris & tenementis quæ præd. W. pater suus sibi & hæ. suis de corp. suo exeunt, ex dono & concessione W. de S. per Finem inde in Cur. nostra de licent. nostra levat', de nobis in capite die obitus sui tenuit, & terras & tenementa illa ei reddidimus: & ideo tibi præcipimus, quod accepta Securitate a præfat. W. &c.

And if the King's Tenant holdeth by Petit Serjeanty, and dieth, and his Heir be within age of eighteen years then he shall have a Writ to have Seisin of the Lands, thus:

Writ of Livery for Lands by Petit Serjeanty.

B **R**EX dilecto, &c. Escheat. suo in Com. Suff. salutem. Quia accepimus per Inquisition. quam per te fieri fecimus, quod T. P. defunctus tenuit in dominico suo ut de feodo die quo obiit decem mesuag', centum acr. terræ, quadraginta acr. prati, & decem acr. pasturæ, triginta acr. moræ, ac viginti solid. reddit. cum pertin', in W. Com. præd', de nobis in capite, per servitium viginti solid. nobis ad Manerium de L. annuatim solvend. pro omni servitio, & quod non tenuit aliqua alia terr. seu tenementa in dominico suo ut de feodo de nobis, nec de aliis, in Com. præd. die quo obiit, & quod W. filius præd. T. est hæres ejusd. T. propinquior, & ætatis decem & octo annor. & amplius; Tibi præcipimus, quod capta Fidelitate ipsius W. juxta form. cujusd. scedula præsentibus interclusa, & accepta Securitate ab eod. W. de rationabili Relevio suo nobis solvend. ad Scaccar. nostrum, eid. W. de mesuag', terræ, prati, moræ & redditu præd. cum pertin', quæ per mort. prædict. T. capta sunt in manum nostram, plenam Seisinam habere fac', salvo jure cujuslibet. Teste, &c.

And thereby it appeareth that the Heir in Socage shall not have Livery cum exitibus, &c. if he pass the age of 14 years; but within the age of 14 years he shall have Livery cum exitibus, &c. and the same is holden for a difference at this day.

The

Writ of Livery for the Aunt, &c.

The King's Tenant hath issue a Son *D. de B.* and two Daughters, and dieth; and the said *D. de B.* hath Livery, and afterwards hath issue a Son *H. de B.* and dieth, the said *H.* being in Ward to the King for his Non-age, and afterwards one Sister hath issue a Son and dieth, and afterwards *H.* dieth being in Ward to the King, and his Aunt and the Son of the other Sister, being of full age, sue to have Livery: now they ought to have a Writ directed to the Escheator, by which it shall be commanded to the Escheator to make Livery to them, and to make Partition between them of those Lands which are in the King's hands, so as each Coparcener shall have part of the Lands which are holden of the King in Capite; and the Writ shall be such:

Writ of Livery for the Aunt and Niece to make Partition.

REX dilecto sibi *A. de H. Escheat. suo in Com', &c. salutem.*
Scias quod cepimus Homagium & Fidelitatem tam de D. de B. filio A. de B. unius soror. D. de B. quam de T. de B. alter. soror. præd. D. de B. consanguin. & hered. H. de B. filii & her. prædict. D. de B. defunct. qu. de nobis tenuit in capite, nobis, pro omnibus terris & tenem. quæ præd. D. de B. tenuit in capite, quæ per mort. præd. D. de B. & ratione minoris ætatis H. filii & her. ejusd. D. de B. qui quidem H. dum infra ætat. & in custod. nostra fuit Diem clausit extremum, ad manus nostras devener', debita, & ejusd. D. de B. & T. terr. & tenem. præd. reddidimus; & ideo tibi præcipimus, quod accepta Securitate a præf. D. de B. & T. de rationalibus Releviis suis nobis solvend. ad Scaccar. nostrum, factaque legali partitione omnium terrarum & tenemen. cum pertin. in Balliva tua, quæ per mort. prædict. D. de B. & ratione minoris ætatis præd. H. ad manus nostras devener', & in manu nostra adhuc existunt, juxta Extent. inde factam, vel aliam si necesse fueris iterato faciend', in duas partes equal' in præsent. pd. D. de B. & T. vel Attorn. suorum in hac parte præmuniendor', si interesse voluerint, ejusd. D. de B. & T. de partibus suis, ipse inde juxta partition. ill. secundum Legem & consuetud. regni nostri Angl. contingent. plenam Seisinam habere fac. salvo jure cujuslib'. Proviso semper, quod uterq. pd. D. de B. & T. partem terr. & tenem. quæ de nobis tenent in capite, & purpartem suam habeat, & tenens noster existat cum pertin. ill. &c. Teste, &c.

And if a man and his wife hold a Manor of the King in Capite in tail, and die, and have issue two Sons, and the younger Son is found Heir by virtue of a Writ of Diem

clausit

clause extremum, and of full age, and the King maketh Livery unto him of the Manor, and afterwards by another Office found by Commission, &c. it is found that the elder Brother his Son and Heir, &c. then upon the last Office found the King shall send a *Scire Facias* directed to the Sheriff, to warn him to shew why the Manor shall not be resealed into the King's hands, and he to answer the Profits received in the mean time. And if the Sheriff do return the Writ served, and that the party is warned and doth not appear; then the King shall resealed the Lands, and shall make Livery of that Manor unto the elder Brother; and the Writ by which the Service shall be made shall be such:

Writ of Livery, and to make void a Livery made before.

REX dilecto sibi, &c. Escheatori suo in Com. &c. Cum nos nuper, comperto per Inquisitionem. H. de S. Escheatoris nostri in Com. præd. ad mandatum nostrum captam, & in Cancell. nostram retornatam, quod I. filius H. B. defuncti, & T. uxor. ejus, quæ præf. I. quondam virum suum supervixit. similis defunct. tenuerunt diebus quibus obierunt in feodo talliat. sibi & hæ. suis de corporibus suis exeuntibus Manerium de I. cum pertin. in Com. præd. de nobis in capite per servitium milit. & quod T. filius præd. I. & T. tunc fuit propinquior hæ. eorund. I. & T. & plena ætatis, cepimus Homagium & Fidelitatem ipsius T. nobis pro Man. præd. debita, & ei Man. illud cum pertin. reddidimus, illudque sibi mandaverimus liberari, sicut per inspectionem Rotulorum Cancellaria nostra plena liquet; ac postmodum supplicavit nobis H. B. filio & hæ. eorund. I. & T. ut cum per quandam aliam posteriorem Inquisitionem, per præf. Escheat. de mandat. nostro captam, & in Cancell. nostram retornatam, sit compertum, quod præd. I. & T. tenuerunt diebus quibus obierunt in feodo talliato sibi & hæred. suis de corporibus suis exeuntibus præd. Manerium cum pertin. de nobis in capite per servitium militare in forma præd. & præd. H. filius pd. I. & T. ætatis quadraginta & sex annorum, est frater senior ejusdem T. & hæres eorundem I. & T. propinquior, absque hoc quod prædict. T. est hæres eorundem I. & T. propinquior, prout per dictam primam Inquisitionem supponit, velimus Man. prædict. cum pertin. in manus nostras resumere, & eidem H. ut fratri seniori prædict. T. & propinquiori hæ. eorundem I. & T. liberari jubere; ac nos volentes in hac parte fieri quod est justum præceperimus per Brev. nostr. Vicecom. nostr. Com. prædict. quod scire faceret præfat. T. quod esset cor. nobis in Cancellaria nostra

nostra in Octavis S. Hilarii proxim. praterit', ubicunque tunc foret, ad ostendend. si quid pro se haberet aut dicere sciret, quare Man. præd. cum pertinen', una cum exitibus inde per ipsum perceptis, in manum nostram resummi, & idem Man. præf. H. ut fratri seniori ejusdem T. filio & propinquiore her. eorund. I. & T. liberari, & nobis de exitibus præd. per præf. T. sic præcept. respond. non deberet, & ad faciend. ulterius & recipiend. quod Cur. nostra consideravit in hac part'; ac prædict. Vicecom. nobis retornerit, quod scire facit præfat. T. quod esset coram nobis in Canc. nostra ad diem prædict', ubicunque tunc foret, ad ostend. quod Breve nostr. pd. requirebat, ad quem diem præd. T. in Canc. præd. solemniter vocat. non comparuit, per quod considerat. fuit, quod Manerium præd. cum pertin. una cum exitibus inde per pd. T. perceptis, in manum nostram resumant', & nobis de exitibus eisd. respondeatur, dictumque Maner. præf. H. liberet'; cepimus Homagium & Fidelit. ejusd. H. nobis pro Manerio pd. cum pertin. debita, & ei Maner. illud cum pertin. reddidimus: Tibi præcipimus, quod resumpto in manum nostram Manerio præd. cum pertin. in Balliva tua, una cum exitibus pd. & accepta Securit. a præfat. H. de rationabili Relevio suo nobis solvend. ad Scacc. nostr', eid. H. de Manerio pd. cum pertin. plenam Seisin. sine dilatione habere facias, juxta consider. pd'; salvo jure cujuscunque, & salvis nobis exitibus de Mancr. pd. a tempore mortis prædict. T. sic perceptis. Teste, &c.

Writ of Livery and Partition which shall issue out of the Chancery unto the Escheator upon Partition there made.

THE Writ which shall be directed to the Escheator to deliver Seisin of Lands unto one Coparcener, or divers, where any of them are within age, and in Ward, is made in several manners. One manner of Writ is, when one Coparcener is of full age, and the other Coparcener is within age, and in the Custody of P. to whom the King hath committed the Wardship; then by the assent of the King's Committee the Partition may be made in the Chancery during the Nonage of the Heir in Ward; and then the Writ directed to the Escheator shall be such:

[261] Rex dilecto sibi I. de W. Escheat. suo in Com. Som. & Dorf. salutem. Sciatis quod ex assensu P. &c. Custod. T. de M. filia A. unius sororum T. de B. defuncti, qui de nobis tenuit in capite, infra etatem & in custodia nostra existent', consanguin. & unius her', cui una propars, & C. sororis, & alterius her. præd. T. de B. plene etatis existent', cui altera propars tam

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terrarum & tenementor. quæ Margeria, quæ fuit uxor T. de B. senior. similis. defuncti, tenuit in dotem, seu alias ad terminum vite sue hereditat. præd. T. de M. & C. die quo obiit. pertinent; assignauimus præf. C. maneria, terr. & tenementa subscripta, viz. manerium, &c. habend. in partem ipsius C. ipsam de omnibus maneriis, terris & tenementis præd. secundum Legem & cons. regni nostri contingent, & eidem C. cujus Homagium & Fidelitatem cepim, & in partem suam prædict. reddidimus: Et ideo tibi præcipimus, quod accepta Securitate de præf. C. de rationabili Releuio suo nobis soluend. ad Secarium nostrum, eidem C. præd. maner, &c. cum pertin. suis in Balliua tua liberes habend. in partem sua præd; salvo jure cuiuslibet, &c.

- A If the King's Tenant hath issue R. N. his Son, and Alice his Daughter, and dieth, and afterwards R. N. hath issue a Son F. and two Daughters E. and C. and afterwards R. N. dieth seised, F. being within age, and afterwards F. dieth seised in Ward to the King within age; and after his death it is found by virtue of an Office by Writ, that E. and C. are his Sisters and next Heirs, and of full age; and afterwards by another Office it is found by Commission, &c. that M. son of the said Alice, one of the Sisters of the said R. N. and J. another Sister of the said R. N. Father of the said F. was Cousen and next Heir to the said F. and of full age; upon which the Sisters of the said F. came into the Chancery, and had a *Scire facias* against the said M. son of the said Alice, and the said J. &c. to shew wherefore they should not have Livery of the Lands as Heirs, &c. And that Writ of *Scire facias* was made returnable the Monday which was the second week of Lent; by which it appeareth that the Writs which shall be sued in Chancery may be returned there in the Vacation time, out of Term; and upon the return of that *Scire facias*, the said M. came and granted that he was not Heir, &c. whereupon the two Daughters E. and C. had a Writ of Livery directed to the Escheator, reciting all the matter, and reciting in the Writ, that the King had respited their Homage until a certain day, commanding the Escheator that he make Partition betwixt them, and that he assign to each of them a part of the Land which is holden of the King *in Capite*; which writ shall be returned and enrolled in the Chancery; the which Writ is in the Register, fol. 316.

*Partition and Livery after the death of Tenant by the
the Courtesie.*

IF it be found by Office by virtue of a Writ, that *B.* held B
the Manor of *B.* by the Courtesie of *England*, in the right
of *E.* who was his Wife, which Manor is holden of *P.* by
Knight's service; and it be farther found by the same Office,
that *B.* is dead, and *M.* and *A.* are his next Cousins and Heirs,
and one of them is within age, and the other of full age:
then he who is of full age shall have a Writ of Livery to the
Escheator, that he take Security for the payment of his Re-
lief, and that he make Partition bewixt the two Heirs, *viz.*
M. and *A.* in the presence of him who is of full age, and in
the presence of the *prochein amies* of him who is within age,
and that he deliver Seisin of his part to him who is of full
age, and that he retain in the King's hands the part of the
other Sister. Which Writ shall be returned and enrolled
in the Chancery, and that Writ appeareth in the Register,
fol. 317.

And the like writ is in the Register, where the King's ten-
nant dieth, one of his Daughters within age, and the other
of full age, in the same folio 317.

Partition and Livery for Lands in Socage.

IF a man holdeth Lands of *G.* in Socage, as of his Manor C
of *E.* which *G.* and the Manor is in the Ward of the King
for the Non-age of *G.* and also he holdeth other Lands of
other Lords by other Services, and dieth, and hath issue
two Daughters, whereof one is within age, and the other
of full age; they shall have Livery out of the King's hand,
sc. the *prochein amies* of the Heir within age shall have *Livery*
cum exitibus, and the other daughters shall have *Livery sine*
exitibus, and a special writ shall be directed unto the Eschea-
tor in that case, reciting the whole matter, and how that the
King hath taken Fealty of her who is of full age, and delive-
red to her her part, commanding the Escheator by the writ,
that he take Security of her of full age for her Relief, and
that he make Partition betwixt the Daughters of the Socage
Land; and that he deliver the part of the younger unto her
prochein amies, with the issues and profits of that part from
the death of the Ancestor; and that he intermeddle not with
the Lands holden of the other Lords: which see Register,
fol. 318.

If

A If the King's Tenant hath issue three Daughters, and he giveth part of his lands unto one of his Daughters in Frank-marriage, and one of the other two Daughters hath issue within age and dieth, and afterwards the Tenant in Frank-marriage dieth, his heir of full age, & then the King's Tenant dieth, and then by Office *virtute Brevis* it is found, that the Daughter of the King's Tenant, and the Issue of the two Daughters are Heirs to the King's Tenant, and that the Issue of one of the Daughters is within age; and afterwards by another Office it is found, that the King's Tenant gave part of his Lands to one of his Daughters in Frank-marriage, for which upon that Office found, the other Daughter, and the issue of the second Daughter, who is within age, have a *Scire facias* against the issue of the Daughter who was advanced in Frank-marriage, to shew at a certain day in the Chancery wherefore the Lands, of which the King's Tenant died seised, &c. should not be delivered to them as Heirs only unto the King's Tenant; and if the issue of her who was advanced in Frank-marriage, being warned by the *Scire facias*, and so returned warned by the Sheriff, maketh default, or cannot shew matter sufficient to maintain her Title; then thereupon a Writ of Livery shall be awarded to the Escheator, rehearsing how that the King hath taken Homage and Fealty of the eldest Daughter, and that he hath rendred to her her part, commanding the Escheator, that he take Security of the eldest Sister to pay her Relief into the Exchequer, and that he make Partition in two equal parts in the presence of the parties, if they will come, and that he deliver Seisin to the Sister of full age of her part, and that he retain the other part in the King's hands for the Non-age of the Daughter of the other Sister. See the Writ thereof in the Register, 320.

B If *A*. holdeth a parcel of Lands in Socage of *B*. which *B*. is in Ward to the King, and also the said *A*. holdeth another parcel of Lands of *C*. in Socage, who is also in Ward to the King for Non-age, and also the said *B*. holdeth other Lands of several other Lords by other services, and afterwards the said *A*. hath issue seven Daughters, and afterwards one of the Daughters hath issue within age, and dieth, and then *A*. dieth, and all that matter be found by Office, then upon that Office returned they shall have a writ to the Escheator, commanding him that he take Fealty of the six Daughters for their parts, and for their Reliefs to be paid in the Exchequer, and that he make Partition of all the Lands into seven parts in the presence of the parties, if they will be there, and

that he deliver full Seisin to the six Sisters of their parts, and that he keep in the King's hands the part of her who is within age, until the K. otherwise command him; and that he deliver the Lands and Tenements which are holden of the other Lords, which are assigned for the part of her within age, unto the *Prochein amie* of the Infant to whom the Inheritance cannot descend, and that he deliver the Issues and Profits of the Lands holden of other Lands than of those Lords who are in the custody of the King, to those who of right ought to have them. And after that this writ is awarded to the Escheator, if the Escheator be removed after that he hath made the Partition according to the Writ, & before the Return of the Writ, then the Sisters may sue forth a new Writ to the new Escheator, reciting the whole matter, and how the Escheator was removed before he had executed the command unto him, commanding the new Escheator, that if the Partition be not made, that he do all such things as the other Escheator ought to have done, and retain in the King's hands, &c.

And then if the new Escheator upon that new writ return unto the King in Chancery, that by virtue of the said Writ he hath made Partition of seven parts of those Lands, and that he hath retained in the King's hands the part of her who is within age, and that he hath delivered unto three of the Sisters their parts, and that the other three Sisters did not come to take their parts, so that they remain in the King's hands; upon such return the said three Sisters may come into the Chancery, and pray to have a Writ unto the Escheator, with the Transcript of the Partition to be enclosed therein commanding him to take Security of them for their Reliefs, &c. and that he deliver to them their parts appertaining unto them, according to the Partition made retaining in the King's hands the part of her who is within age, until he command to the contrary, and that he return the Writ, and what he hath done upon the same, under his Seal, fully and openly without delay. See the Writ thereof in the Register, 319.

And it appeareth by the Register, that if the King's Tenant hath issue two Daughters, and one be within age, and the other of full age, and dieth, that she who is of full age may sue unto the King to have the Custody of her sisters part during her Non-age, and to sue Livery of the other moiety: & thereupon she shall have a special Writ unto the Escheator, rehearsing how the King hath taken her Homage, and hath assigned unto her the moiety of the lands, &c. which appertained

rained unto her for her part, and that he hath committed the Custody of the other part unto her during the Non-age of the Heir the other Coparcener, commanding the Escheator by the Writ, that he take Security of her to pay her Relief into the Exchequer, and that he deliver Seisin of the moiety unto the Heir of full age, until the full age of the other Coparcener within age, with the issues and profits of the other moiety from the death of the Ancestor. And thereby it appeareth, that when the other Coparcener within age cometh of full age, they both shall sue forth a new Livery joyntly. See the Register, fol. 320.

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A And it appeareth by the Register, that if a man hath lands in London in Fee, and hath issue two Daughters, and leaseth the Lands for life, and dieth, and afterwards the Tenant for life dieth, the Daughters of full age, & all the same be found by Office; the two daughters shall sue forth a writ of Livery for those lands, because they are holden of the King in Burgage, and the Writ shall be directed to the Escheator, commanding him to make Partition of those Lands betwixt the Daughters. And if one Daughter be indebted to the King, then by the same Writ he shall command the Escheator, that he retain the part of her who is indebted in the King's hands, until he hath other command, and that he deliver the other part unto the other Daughter: reciting the same Writ, that he hath taken Homage and Fealty of the other Daughter: And moreover, by the same Writ the Escheator shall be commanded, that he take Security of the other Daughter for the Relief of that Coparcener, if any be due, &c. and that he return the whole matter into the Chancery under his Seal, &c.

B And if the King's Tenant who holdeth of him *in Capite* in Fee dieth, and hath issue three Daughters his Heirs of full age, and another Woman who holdeth in Dower other lands for term of her life of the assignment of her Husband, which Lands are also holden of the King *in Capite*, dieth, & the Reversion of those Lands are the Inheritance of the said Daughters; they shall have one Writ of Livery unto the Escheator for all those Lands, reciting the whole matter, and how that he hath taken their Homage and Fealty, or that he hath respited the same till a certain day, &c. and that he render to them their parts, commanding the Escheator that he take Security of them for to pay their Reliefs, &c. and that he make equal Partition between them in their presence, if they will appear, and that he give full Seisin to each of them of their parts; with such a provision, that each

Writ de Dote assignanda.

of them shall have part of that Rent which is so holden of the King in *Capite* for her part, so that each of them be Tenant to the King, &c. And it appeareth by that writ, that a Rent may be holden of the King by Knight's service in *Capite*, as well as Lands. See the Register, fol. 318.

Writ de Dote assignanda.

THe Writ *de Dote assignanda* lieth where it is found by Office, that the King's Tenant was seised of Tenements in Fee or in Fee-tail the day he died, &c. and held of the King in *Capite*; then the wife may and ought to come into the Chancery, and there make Oath that she will not marry without the King's Licence: and thereupon the King may assign her Dower in the Chancery of those Manors and Lands, and thereupon she shall have a Writ unto the Escheator where the Lands are, which shall be such:

Rex Escheatori suo in Com. B. salutem. Sciatis quod de terris & tenementis que fuer. N. defuncti, qui de nobis tenuit in capite, & que occasione mortis ejusdem N. capt. sunt in manum nostram, assignavimus I. que fuit uxor præd. N. tertiam partem Maner. de T. & C. in Com. T. cum pertinent, necnon iij. partem purpart. que fuit ipsius N. Cur. libertatis Honoris Winton. & vil. franci pleg. in dicto Com. T. habend. in Dotem ipsam de Maneriis & purparte præd. secundum Legem & cons. regni nostri Angliæ contingent; necnon de assensu Ed Principis Walliæ, filii nostri charissimi, custod. Maner. de R. in Com. Buck', qu. ad l. li. & Manerii de N. cum pertinent. in dicto Com. B. que ad x. li. extendunt per annum, sicut per Extentas inde de mandato nostro fact. & in Canc. nostram return', est compert. assignavimus præf. I. dict. Maner. de N. cum pertinent. pro dote sua dictorum Maner. de R. & N. habend. in forma præd. Et ideo tibi præcipimus, quod eidem I. dictum Maner. de N. cum pertinent. liberes habend. in dotem suam, sicut præd. est. Teste, &c:

And when the wife hath made her Oath in the Chancery, she may have a writ of *Dote assignanda* to the Escheator, to assign her Dower: and the Writ shall recite, that she hath made her Oath in the Chancery, &c. But the use is to make the Assignment of the Dower in the Chancery, and to award a Writ unto the Escheator, do deliver the Lands assigned unto her; and although the King doth commit the custody of the Land unto another, yet the King may assign Dower unto the wife in Chancery, and she shall have a writ unto the Escheator to deliver unto her that Dower, as appeareth by the Register. And the Writ shall be such;

Rex

*Rex Escheatori, &c. salutem. Cum inter ceter. terras & tenement. I. quæ fuit uxor N. defuncti, qui de nobis tenuit in capite, per nos de terris & tenement. quæ fuer. præd. N. in dotem assignat, assignaverimus eidem I. partem Maner. de Grouby cum pertinent. in Com. præd, necnon tertiam partem purpatris quæ fuit ipſus N. Cur. libertatis Honoris W. & visum franci plegii in eodem Com, habend. in dotem in forma prædict: Tibi precipimus, quod eid. I. cujus sacrament. quod se non maritabit sine licentia nostra recepi-
mus, dictas tertias partes in Balliva tua, in præſentia custod. eorundem Maner, & tertie patris, per vos inde præmuniend, si interesse voluerit, vel attornati sui in hac parte. assignar. & liberari fac, habend. in dotem sicut prædict. est; & cum Assignmentem illam, &c. Teste, &c. And if the Wife after the death of the Husband doth come into the Chancery, and prayeth her Dower there; the King may grant a Writ unto the Escheator, commanding him to take Security of the Wife, that she do not marry her self, and that the Escheator do assign Dower unto her. And the Writ shall be such:*

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Rex Escheatori, &c. Precipimus tibi quod, capto sacramento M. quæ fuit uxor W. defuncti, qui de nobis tenuit in capite, quod se non maritabit sine licentia nostra, eid. rationabil. Dotem suam, ipsam de omnibus terris & tenem. quæ præd W. quond. vir suus tenuit in dominico suo ut de feodo in Balliva tua die quo obiit, & quæ per mortem præd. W. capta fuer. in manum nostram, & in manu nostra sic existunt, secundum Legem & cons. regni nostri Angl' contingent. per Extent. inde fact. vel alium si necesse fuer. iterato faciend. in præſentia B. per te inde præmuniend. si interesse voluerit, assign. fac, & cum Assignment ill. sic feceris, eam sub sigillo tuo distincte & aperte mittas, ut eam in rotulis Canc. nostre, prout moris est, irrotul. faciamus. Teste, &c.

A And if a man dieth seised of Lands which are holden by Knight's Service, of any Manor, or otherwise, as in any Abby, Bishoprick or Priory, or such as are in the King's hands by reason of vacancy of the Abby or Bishoprick, &c. then if the Wife will have Dower, she ought to sue in the Chancery, to have such writ directed unto the Escheator, to assign her Dower; but there the Wife shall not take Oath, that she shall not marry without the King's Licence, as appeareth by the Writ; which is such:

Rex, &c. Precipimus tibi quod A. quæ fuit uxor B. defuncti, qui de Abbate de Burgo S. Petri nuper vacantis, & in manu nostra existens, tenuit per servitium militate rationabil. Dotem suam de omnibus terris & tenement, &c. quæ præd. B. vir suus tenuit de Abbacia præd. in Balliva tua die quo obiit, & quæ post mortem ipſius B. in manu nostra existunt, &c. ut supra.

T t 4

And

And the like Writ may be sued by the Wife for lands which her Husband held by Knight's Service of the Manor of him who is in the Ward to the King; by reason of his Non-age; but there she shall not make Oath, that she will not marry her self, no more than in the case before.

And the King may assign Lands in Dower in the Chancery, rendering Rent yearly to the King, &c. because the Lands do exceed the very value of the third part of all the Tenements whereof she ought to have Dower. And then upon that Assignment made in Chancery she shall have and sue such Writ to the Escheator.

Rex Escheat', &c. Sciatis quod de terris & tenementis quæ fuerunt E. de B. defuncti, qui de nobis tenuit in capite, & quæ occasione mortis ejusdem E. capta sunt in manum nostram, assignavimus M. quæ fuit uxor prædicti E. Maneria subscripta, videlicet, Maneria de B. & C. &c. cum pertin. in Comitatu T. quæ ad centum libras extenduntur per annum, habend. in Dotem, ipsam de terris & tenement. præd. secundum Legem & cons. regni nostri Angl' contingent', reddend. inde nobis per annum ad Scaccar. nostrum tantum quod excedit dotem suprad'. Et ideo tibi præcipimus, quod eid. M. dicta Maneria cum pertinen. liberes, ei habend. in dotem suam in forma prædict'. Teste, &c.

And if the Wife be impotent, so as she cannot come into the Chancery to make Oath, and to demand her Dower, then she may sue a special Writ directed to certain persons to take her Oath, and to receive Attorney for the Wife to sue for her Dower in the Chancery, &c. and the Writ appeareth in the Register, fol 298.

And if the King make Livery unto the Heir at his full age, saving unto the Wife her Dower to be assigned by the King; then, if the Wife will demand Dower, she ought for to sue for the same in the Chancery; and if she do demand her Dower there, then shall issue a special Writ unto the Escheator, that he warn the Heir for to be in Chancery at a certain day, &c. and there the Wife shall have the same day to receive her Dower, &c. And the Writ which shall issue against the Heir shall be such:

Rex Escheat', &c. Cum Dominus Edw. nuper Rex Angl': pater noster, xx. die Januar. proxim. præterito cepit Homag. T. de B. filii & hered. T. de B. defuncti, de omnibus terris & tenementis quæ idem T. pater suus tenuit de dicto patre nostro die quo obiit, &c. & terras & tenementa illa reddiderit eaque sibi mandaver. liberari, salvo jure cujuslibet, & salva M. quæ fuit uxor præd. T. rationabili Dote sua, ipsam de terr. & tenement. præd. secundum Legem & cons. regni

regni nostri Angl. contingent', & ei prout moris est assignand',
sicut per inspectionem Rotul. Cancell. dicti patris nostri nobis con-
stat; ac prefat. M. nobis supplicaverit, ut ei Dotem suam, ip-
sam de terr. & tenement. pred. contingent, secundum Legem &
cons. regni nostri Angl', assignari faciamus, per quam diem dedi-
mus pref. M. quod sit in Canc. nostra in crastin. Animarum, &c.
ubicunque, &c. ad recipiend. Dotem suam predict': Tibi præci-
pimus, quod scire fac. pref. T. quod ad diem pred. interfit Assign-
nat. Dotis pred', si sibi viderit expedire; & habeas ibi nomina,
&c. & hoc Breve. Teste, &c.

But if the King maketh Livery unto the Heir by his Writ
directed to the Escheator, by which Writ he commandeth
his Escheator to deliver unto him Seisin of all his Lands, &c.
salvo jure cujuslibet; and he putteth not in the Writ these
words, *salvo M. quæ fuit uxor. &c. rationabili dote sua, ipsam
de terr. & tenen' &c. contingent', & per nos assignand'*: then in
that case the wife ought to sue her writ of Dowry against the
Heir, if she will demand Dower of those Lands, because the
King made Livery generally of those Lands by his Writ,
without any reservation of Dower to be assigned by him, &c.

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A And if the King make a reservation of Dower to be assigned
by him by his writ of Livery which is directed to the Es-
cheator, if the wife never demand Dower, or if she hath
Dower assigned unto her by the King in Chancery, yet after
the Assignment made by the King, the reversion thereof is in
the Heir, and he shall not sue Livery of that Reversion after
the death of the Tenant in Dower, because the writ of Li-
very doth not reserve any thing to the King but Assignment
of Dower to the Wife, but the Writ doth command the
Escheator to deliver Seisin of all the Land, and that the Es-
cheator doth, and by that the Livery of all the Land passeth
from the King; and therefore it followeth, that when the
Wife is assigned her Dower by the King in Chancery, that
yet the Reversion doth remain in the Heir, &c. for which
he shall not sue a new Livery of that Reversion after the death
of the Tenant in Dower, &c. *Tamen quare* of that Case.

B And if the Wife be assigned Dower in the Chancery, and
afterward it is surmised by the Heir, or by another for the
King, that the Land assigned to the Wife is not extended to
the very value, but that the Land assigned to her is much more
in value than it is extended at, and that the Lands which re-
main in the King's hands are extended to the very value, &c.
then the King shall send a Writ to the Escheator to make a
new Extent: and upon that Writ returned, if it be found
that the Land assigned to the Wife is of greater value,

If the Land
assigned to
the Wife be
evicted, she
shall have a
Scire facias
to rescise
the Land,
and shall be
new en-
dowed. 43
Ass. 32. Br.
Dower 65.

&c.

&c. then upon Return thereof a *Sciri facias* shall be awarded against the wife, to shew cause wherefore she shall not be anew endowed, &c. and if she be warned, and maketh default, it seemeth she shall be new endowed for her default; or if she appear, and cannot say any thing contrary to that new Extent, she shall be endowed anew, so as part of the Land assigned to her shall be taken from her at the Kings pleasure; or the King may make a new Assignment of all that she had in Dower, if he pleaseth, and a new Writ shall be to the Sheriff to deliver her Seisin thereof, so newly assigned to her: *Quere* the use of this point.

And if the wife make Oath that she will not marry her self without the Kings license, and is endowed upon the same, &c. and afterwards she marrieth without license, &c. then the King shall send a Writ to the Escheator, that he re-seise all the Lands which she holdeth in Dower, as appeareth by the Register, and not all the other Lands which she or her Husband had in their own right; and the Writ is such:

Rex Escheatori, &c. Cum A. quæ fuit uxor I. de B. defuncti, qui de nobis tenuit in capite, quæ nuper sacramentum prestitit corporale, quod se non maritaret sine licentia nostra, jam se W. de P. maritaverit, licentia nostra super hoc non obtenta ut accepimus; Nos, contemptum hujusm. nolentes transire impunitum, necnon indemnitati nostræ volentes prospicere in hac parte, tibi præcipimus, quod si ita est, tunc omnia terras & tenementa quæ prædict. W. & A. tenent in dotem ipsius A. de heredit. præd. I. in Balliva tua sine dilatione cap. in manum nostram, ita quod de exitibus inde provenientibus nobis respondeas ad Scaccar. nostrum, quousq; nobis de forisfactura ad nos inde pertin. satisfact. fuer', vel aliud inde duxerim. demandand. Tesse, &c.

Writ de Levari facias.

THE Writ of *Levari facias* is a Writ which shall issue out of the Record, and shall issue sometimes out of the Chancery, and sometimes out of other Courts where the Record is. As if a man be bounden in a Recognisance in the Chancery in 20 l. to be paid at the Feast of St. Mich. next following, then if he do not pay the Money at the day, a *Levari facias* shall be directed to the Sheriff, that he levy the sum on his Goods and Chattels: and the form of the Writ is such;

Rex Vicecom', &c. Quia I. filius B. solviffe debuit M. de B. xx l. in Festo S. Michaelis, anno regni nostri, &c. sicut constat nobis per inspection. Rotulor. Cancell. nostræ & eas ei nondum solvit, ut dic'; Tibi præcipimus, quod præd. pecuniam

de terris & catallis ipsius I. in Balliva tua sine dilatione levari facias, ita quod eam habeas in Cancell. nostra in Crast. Nativ. S. Johan. Bapt. prox. futur', ubicunq; tunc fuer', pref. M. ibid. liber. & hoc nullatenus omittas : & habeas ibi hoc Breve, &c.

F And he may have an *Alia*, and a *Pluries*, *Vel causam nobis significes*, directed to the Sheriff; and if he will not return the Writ, he shall have an Attachment against the Sheriff.

G And this writ is given by the Common Law before the Statute of *West. 2.* which gave the Writ of *Elegit*. But this writ ought to be sued within the year after the day of payment to be made by the Recognisance; for after the year and day of payment to be made, if he do not sue forth this Writ, then he ought to have a Writ of Debt before the Statute of *West. 2.* which gave the *Scire facias* against him who was so bounden by Recognisance; but now by that Statute he shall have the writ of *Scire facias* to make him come at a certain day into the Chancery, to shew what he can say why

H he ought not to pay the sum, &c. And if the Sheriff upon the *Levari facias* return that he hath levied 10 l. of the sum, &c. which he hath delivered to the party, &c. then upon that Return he who ought for to have the Money may sue forth a *Sicut alias levari facias* directed to the Sheriff, for to keep the residue of the sum : which Writ shall be such :

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Rex Vic', &c. Quia T. Abbas de B. soluisse debuit R. centum libras, &c. in Festo, &c. anno, &c. sicut constat, &c. & eas, &c. per quod tibi preceperimus, quod pred. pecuniam de terris & catallis ipsius Abbatis in Balliva tua sine dilatione levare fac', ita quod eam haberes in Canc', &c. ubicunque, &c. pref. R. ibid. liberand' ; ac tu nobis retornaſti, quod cepisti, in manum nostram per diversas vices de bonis & catallis ipsius Abbatis ad valenc', &c. qu. inde levaſti, & pref. R. habere fecisti ; Tibi precipimus, quod resid. debiti pred. de terris & catallis ipsius Abbatis in Balliva tua sine dilatione levare facias, ita quod illud habeas coram nobis a die, &c. ubicunque, &c. pref. R. ibid. liberand' : & hoc nullatenus omittas, &c. Teste, &c.

A And if a Parson be bounden in a Recognisance in Chancery in 200 l. to pay at a certain day, &c. and he doth not pay the same at the day, then the Recognisee shall have a *Levari facias* directed to the Bishop, or a *Levari facias* directed to divers Bishops, to levy the money of his Spiritual goods ; and the Writ shall be such :

Rex venerabili in Christo Patri, &c. salut. Quia I. Persona Ecclesie de S. Com. H. vestre Dioc', & T. de L. Persona Ecclesia

Ecclesia de M. Com. de B. Dioc. Linc', solviffe debuer. magistro F. ducent. libras in Festo Omnium Sanctorum, &c. anno, &c. sicut constat &c. ut dicit; Vobis mandamus, quod centum & viginti marcas de sum. præd. de bonis & catallis ipsius I. in dicta Dioc. vestra sine dilatione levare fac', ita quod easdem centum & viginti marcas habeamus in Canc. nostra ubicunque, &c. præf. F. ibid. liberand': & hoc nullatenus omittat': & habeatis ibi hoc Breve. Mandavimus etiam W. Linc. Episcopo, quod ipse centum & viginti marcas, &c. residuas de bonis Ecclesiasticis ipsius T. in dicta Dioc. levare faceret in forma præd'. Teste, &c.

But if the Parson hath Lands of his own Purchase, he may have a Writ to the Sheriff to levy the same, &c. But now by the Statute of *Westm. 2. cap. 18.* he may sue forth an *Elegit* upon the Recognisance made in the Chancery, directed to the Sheriff, to have Execution of the moiety of his Lands, and of all his Goods and Chattels, except his Beasts of the Plough, and to deliver them to the Heir for his maintenance; and the form of the Writ is such:

Rex Vicecom, &c. Quia R. undecimo die Feb. ult. præterito, in Cancell. nostra recognovit se debere N. viginti libras, quas ei solviffe debuit in Festo, &c. tunc prox. sequenti, sicut constat, &c. Cancell. nostræ, & eas ei nonudm solvit, ut dic'; ac idem N. juxta Stat. inde editum, eligit sibi liberari pro præd. viginti libris omnis catalla & medietatem terræ ipsius R. tenend. juxta formam præd. viginti librarum, per rationabilem appreciation. eorundem, exceptis bobus & asinis caruca, in præsentia præd. R. per te inde præmunien', si interesse voluerit, facien', præf. N. vel suo certo Attornato fac' liberar': & si catalla illa ad valenc. præd. viginti librar. non sufficient, tunc catalla illa sic minus valenc. per rationabilem appreciation', ac etiam medietatem terræ ipsius R. in Balliva tua per Extent. similiter in præsentia tua in forma præd. facien', præf. N. vel dicto suo Attornato fac. liberar', tenend. ut liberum teneamentum suum, quousque dictum debitum inde fuerit levatum. Et de eo quod inde fec. nobis in dicta Cancell. nostra tali die, ubicunque tunc fuerit, sub sigillo tuo distincte & aperte constare facias: & habeas ibi hoc Breve. Teste, &c.

And after the year and the day of payment passed of the Recognisance, the Recognisee ought for to sue a *Scire facias* against the Recognisor, to shew what he can say why the Recognisee should not have Execution; and if he be returned upon that Writ warned by the Sheriff, if he do not appear, or if he do appear, and cannot say any thing wherefore he should not have Execution, then the Recognisee

nisee may sue forth the Writ of *Elegit* to have Execution of all his Goods and of the moiety of his Lands : and if the Sheriff return the *Elegit*, that the Recognisor hath made a Feoffment in Fee of part of the Lands to divers Tenants, &c. and that he hath enfeoffed the King of the residue; then upon that Return the Lands whereof the King is seised by that Feoffment are discharged. But he may sue a *Scire facias* to warn the other Tenants to appear at a certain day, to shew cause wherefore the said Lands shall not be delivered in Execution; and if they be warned, and do not appear, or if they come, and cannot say any thing, &c. to bar the Execution, then the Recognisee shall have Execution against them of those Lands by Writ of *Elegit*, &c. but he shall have the *Elegit* before that he sueth the *Scire facias* against those Tenants.

D And if a man be bounden by Recognisance in the Chancery, and the Recognisor hath certain Indentures of Defeasance, then, if the Recognisee will sue Execution upon the Recognisance, the Recognisor may come into the Chancery, and shew the Indentures of the Defeasance, and that he is ready to perform them, and thereupon he shall have a *Scire facias* against the Recognisee returnable at a certain day in the Chancery; and in the same Writ he shall have a *Superseas* directed to the Sheriff, that in the mean time he do not Execution by virtue of the Writ sued forth by the Recognisee. And if the Sheriff upon any such Writ return, that he hath sent to the Bailly of the Liberry to do Execution, which Bailly hath returned him no answer; then upon that Return he shall have a new Writ directed to the Sheriff, with a *Non omittas* therein, that he enter the Franchise and do Execution, &c.

A And a man may sue Execution by *Scire facias* upon a Recognisance made in the time of another King in the Chancery, or in the Common Pleas, or in the Court of Record. And the King may by his Commission give authority to one to receive a Recognisance of another man, and to return the same into the Chancery; and by virtue of that Commission if a man doth before the Commissioners acknowledge a Debt to be paid to another at a certain day, &c. and certifie the same into the Chancery with the Commission, &c. then upon the Certificate thereof, if he do not pay the Debt at the day, he shall have an *Elegit* upon the Consuance so taken, as well as if it were taken in the Chancery : and the form of the Commission is such :

Rex dilecte & fideli suo R. de M. salut. Sciatis quod dedim.
vobis

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Writ de Levare facias.

vobis potest. recipiend. Recognic. quam I. de H. vobis facere voluerit G. de T. de quacunque pecunia summa; & ideo vobis mandamus, quod cum Recogn. illam receperitis, nos inde, ac de die five diebus solutionis, necnon de die caption. ejusd', in Canc. nostra, sub sigillo vestro, distincte & aperte reddat. certior, hoc Brev. nobis remittentes. Teste, &c.

And there is another form thus: *Rex, &c. Sciatis quod dedimus vobis potest. recipiend. hac vice, nomine nostro, Recognition. quod I. de T. de quocunque debito facere voluerit coram vobis; & ideo vobis mandamus, quod cum Recogn. illam ceperitis, nos ind. sub sigillo vestro distincte, &c.*

And by that Commission he hath general authority to take Recognisance of any man who will acknowledge any debt before him to any person whatsoever, &c.

See before
130. H.

So note that *Capias ad Satisfaciend.* lieth not upon a Recognisance.
34 H. 6. 45. 48 E. 3. 14.

Vi. 38 E. 3.
12 Br. Execution 42.

If a man be bounden in Recognisance in 100 l. to pay at five several days 20 l. then immediately after the first day of payment is past, he may sue an *Elegit* for 20 l. and at the second day he may sue another *Elegit*, or *Levari facias* of other 20 l. and so of all the 20 l. every day of payment, and he shall have such Writ of *Elegit* for the payment that shall be made at that day, and shall not stay his Suit till all the days of payment are past.

And if two be bound in Recognisance in Chancery, viz. *quilibet eorum in solid. recogn. se debere, &c.* he may sue several *Scire facias* against them to have the Money levied of their Goods and Lands, &c.

If a man be bound in a Recognisance in Chancery or other Court of Record, and afterwards the Recognisee dieth, his Executors may sue forth *Elegit* to have Execution of the Lands of the Recognisor. And if the Sheriff return that the Recognisor is dead, then the Executors shall sue a special *Scire facias* against the Heir of the Recognisor, and against those who are Tenants of the Lands which he had at the day of the Recognisance made; and that Writ of *Scire facias* shall recite and shew that the Executors who sue the Writ have elected to have the moiety of the Lands which the Recognisee had at the making of the Recognisance: and the form of the Writ is:

Rex Vic. &c. Cum I. de W. tali die & an. &c. in Cancell. nostra recognovit se debere N. nuper Duci Lanc. cent. libras, quas ei soluisse debuit in Festo, &c. tunc prox. futur', sicut constat, &c. & eas ei nondum solvit, ut dicit', ac W. B. & C. Exec. pred. nuper Ducis defuncti, juxta Stat. inde edit', eleger. sibi liberari pro pred. cent. libris omnia catalla & medietat. terræ ipsius I. W. tenend.

tenend. juxta form. Statuti prædⁱ; per quod tibi Præceperimus, quod scire faceres præfat. I. de W. quod esset in Cancell. nostra tali die proxim. futurⁱ, ubicunque, &c. ad ostend. si quid pro se habere vel dicere sciret, quare omnia catall. sua & medietas terr. sua præf. Execut. pro præd. cent. libris liberari non deberent, juxta form. Statuti præd. ac tu nobis retornaveris, quod præd. I. de W. mortuus est; Tibi præcipimus, quod scire fac. Hered. ipsius I. de W. necnon Tenentibus terr. quæ sunt ejusd. I. de W. die Recogn. præd. quod sint in Cancell. nostra, &c. proxim. futurⁱ, ubicunque, &c. ad ostendend. si quid pro se habeant vel dicere sciant, quare mediet. terræ quam ipsi tenent de terra præd. præf. Execut. pro præd. centum libris liberari non debeant, juxta form. Stat. præd. Et habeas ibi nomina illor. per quos, &c. Teste, &c.

And thereby appeareth, That if a man be bounden in a Recognisance, &c. altho that the Recognisee dieth, yet his Executors cannot sue forth an *Elegit* to have Execution of the Recognisance within the year after the day of payment, without suing forth a *Scire facias* against the Recognisor, &c. But against the Heir of the Recognisor, or the Terre-tenants; the Recognisee or his Executors ought to sue forth a *Scire facias*, &c. otherwise if they be ousted, &c. by such Execution of their Lands, they shall have an *Assise of Novel disseisin*, &c.

14 A. 7. 16.
15 A. 7. 16.

Writ de Idemptitate nominis.

THE Writ de Idemptitate nominis lieth, where a man is sued in a Personal Action, and upon the *Capias* or *Exigent* awarded, another man, who beareth the same name, is arrested by force of the Writ, then he who is so arrested shall sue forth this Writ of *Idemptitate nominis*; and this Writ shall be directed sometimes to the Escheator, if he or his Goods be arrested by him, or unto the Sheriff, if he be vexed or molested by him, and the form of the Writ is such:

Rex dilecto sibi I. de S. Escheatori suo in Com. Lincⁱ, salutⁱ, [286]
Cum nuper, ut accepimus I. de R. de Lond. Taverner jam defunctus, ut dicⁱ, pro eo quod non venit coram Justic. nostris de Banco ad respondend. R. de tempore quo fuit Receptor denarior. ipsius R. in Exigend. positus fuisset in Hustingo nostro Lond. ad utlagand. & ea occasione die Lunæ proximo post Festum S. Petri in Cathedra anno regni nostri decimo, utlagatus; ac jam ex parte I. de R. de Lond. Baker intellexerimus, quod licet ipse non sit idem I. de R. qui ad sectam ipsius R. utlagatus fuit, nec aliqua bona seu catalla quæ fuerunt ejusdem utlagat. ad manus suas devenerⁱ; tu tamen, propter Idemptitatem hujusmodi nominis & cognominis I. de R. prætendens ipsum I. de R. de Lond. Baker esse

esse eundem I. de R. de Lond. Tavern' ; quic sic utlagatus fuit, bona & catall. ejusdem I. de R. de Lond. Baker, colore ejusdem Brevis nostri, de bonis & catallis quæ præd. I. de R. de Lond. Tavern. habuit in Balliva tua die promulgationis Utlagar. prædict. in manum nostram capiend', in manum nostram seisire intendis, & ipsum ea occasione multipliciter inquietas minus juste in ipsius I. de R. de Lond. Baker dampnum non modicum & gravamen ; super quo nobis supplicavit sibi per nos de remed. provid' : Et quia ipsum I. de R. de Lond. Baker indebite prægravari nolumus, tibi præc', quod si per inquisitionem vel alio modo legitim tibi constare poterit, præd. I. de R. de Lond. Baker non esse eundem I. de R. de L. Tavern. qui sis utlagat. fuit, nec aliqua bona seu catalla quæ fuerunt ejusdem utlagati die promulgationis Utlagariæ prædict. ad manus suas devenisse, ut est dictum, tunc captioni bonorum & catallor. ejusd. I. de R. de L. Baker, occasione Utlag. præd. in man. nostram supers. omnino. Proviso semper, quod de omnibus bonis & Catall. quæ præd. I. de R. de L. Tavern. habuit in Balliva tua die promulgat. Utlagar. præd', si quæ fuer', nobis ressp', ut est justum. Teste, &c.

And so if a man be distrained by Process out of the Exchequer for to accompt, &c. for another person who hath the same name which he hath, then he shall sue that Writ to the Barons of the Exchequer and to the Treasurer, and the Writ shall be such :

Rex Thesaurar. & Baronibus suis de Scaccar. salutem. Monstravit nobis J. Clerke de N. quod cum quidam J. Clerke nobis in quod. Compoto de exitibus passagii Viridis castr. reddendo die quo obiit tenebat', qui quidem J. Clerke mortuus est, & vocabat. dum vixit, J. Clerke de A. ut dicit', ac pro eo quod præd. J. Clerke de N. habet idem nomen & cognomen sicut præf. J. Clerke de A. ad reddend. nobis Compot. de exitibus prædict. multipliciter inquietari facitis minus juste, ut accepimus, super quo idem J. Clerke de N. nobis supplicaverit, ut sibi de remedio in hac parte subvenir. velimus : Nos tam pro nobis quam pro præf. J. Clerke quod justum fuer. fieri volentes in hac parte, vobis mandam', quod si per aliqua memorand. dict. Scaccarii, vel per inquisitionem inde, si necesse fuerit, capiend', inveneritis ipsum J. Cl. de A. Commission. nostram de Officio illo habuisse, & exitus inde prætextu hujusmodi Commission. nostræ aut alio modo recepisse, & ipsum J. Clerke de N. hujusmodi Commission. nostram non habuisse, nec se inde in aliquo intromisisse, & ipsum J. Clerke de N. propter Idemptitat. nominis & cognominis, & non alia de causa, coram vobis impetire fuisse ; tunc ipsum J. Clerke de N. ad reddend. nobis compotum de exitibus prædictis ad idem

idem Scaccar, prout justum fuerit, exonerari & quietum esse fac',
Processum debet. vers. pref. J. Cl. de A. si superstes sit, vel her',
executores, seu terrarum & tenementorum ipsius J. Cl. de A. si
mortuus fuerit, tenentes, juxta juris exigent. facientes. Teste,
&c.

B And if a man be taken by a *Capias utlagatum*, he may
sue forth a Writ de Idemptitate nominis in the Chancery di-
rected to the Justices of the Common Pleas, if the Process
be sued there, or unto the Justices of the King's Bench, if the
Process be there, commanding them to make enquiry, &c.
as afore is said, &c. so as this Writ seemeth but as a Com-
mission to make enquiry, and to know the truth; and upon
that Writ directed to the Justices, they shall award a Writ
unto the Sheriff to make the Enquiry, &c. but if a man be
outlawed in the Common Pleas, and taken by *Capias*, he
may come into the Common Pleas, and pray a Writ of En-
quiry whether he be the same person, without suing the
Writ de Idemptitate nominis.

A And if an *Exigent* be to be awarded against one, if one
who hath the same name come and saith that he is ready to
answer, then the Plaintiff may say that he is not the same
person, and then the Plaintiff shall put a diversity of the
Names, and the same shall be entered, and then the *Exigent*
shall be awarded according to that difference which the
Plaintiff hath made.

At the *Exigent* returned the Defendant appeareth by *Sup-
persedeas*, and the Plaintiff saith, that he that appeareth is
not the same person: And the opinion of *Hanke* was, that
he shall be put to his *Idemptitate nominis*, and shall not that
way avoid the Outlawry.

C And if an *Exigent* be to be awarded upon an Indictment,
if one cometh and saith, that he hath the same name as he
against whom the Process upon the Indictment is awarded,
and prayeth that the King's Attorney may put a difference
of their names; the same shall not be done, for that should
change the Indictment, because the Process ought to be
made according to the Indictment; and if he be grieved
be the Process, he must sue forth the Writ de Idemptitate
nominis, and shall not have other remedy, &c. And he may [269]
have that Writ to the Justices of the Peace if they award
Process of *Utlagary* upon Indictments taken before them,
and also to the Justices of Gaol-delivery, as appeareth by
the Register, fol. 195, 196.

Writ de Homagio respectuando.

THe Writ of Respite of Homage lieth, when the Heir A
comes of full age who holdeth of the King *in Capite*,
and ought to sue his *Livery*, then the Order is, that he first
do Homage to the King; and thereupon to have his Writ of
Livery to the Escheator; but the King of grace and favour
may respite his Homage as he pleaseth: And thereupon he
shall have a Writ unto the Escheator testifying the same, and
commanding him to deliver him Seisin of the Lands; and
the Writ shall be such:

Rex dilecto, &c. Escheat' suo, &c. salutem. Scias quod re-
spectuamus Homagium I. soror. & har. I. filii T. de B. defuncti,
nobis de omnibus terris & tenem. quæ præd. I. frater suus tenuit
de nobis in Capite die quo obiit debitum, usque ad Festum S. Mi-
chael. prox. futur', & terras & tenem. illæ ei reddidim'. Et ideo
vobis mandam', quod accepta Secur', &c.

Writ de Heretico comburendo.

NOte, it appeareth by Britton in his Book, that those B
persons shall be burnt who feloniously burn others
Corn or others Houses, and also those who are Sorcerers or
Sorceresses; and Sodomites and Hereticks shall be burnt;
And it appeareth by that Book, *lib. 1. cap. 17.* that such was
the Common Law. But note, that the person who shall be
burnt for Heresie ought to be first convict thereof by the
Bishop who is his Diocesan where he dwelleth, and abjured
thereof, and afterwards, if he relapse into that Heresie or
any other, and thereof be condemned in the said Diocess,
then he shall be sent from the Clergy to the Secular Power,
to do with him as it shall please the King, &c. And then
it seemeth the King, if he will, may pardon him the same.
And the form of the Writ is such:

Rex, &c. Majori & Vic' London. salutem. Cum venerabilis C
pater. Thom. Archiepiscopus Cantuar', totius Angliæ Primas,
& Apostolica Sedis Legatus, de consensu & assensu ac consilio
Episcoporum & Confratrum Suffragan. suorum, necnon totius
Cleri Provinciæ suæ in Concilio suo Provinciali congregat', iu-
ris ordinibus in hac parte requisit. in omnibus observat', W.
Sawtr', aliquando Capellanum, in Heres. dampnat', & per
ipsum Willielmum præantea in forma iuris abjurat', & ipsum
Will. in Heresim præd' relaps', per suam sententiam definitivam
Hereticum manifestum pronunc. & declarav', ac degradandum
fore

fore decreverit, & ab omni prerogativa & privilegio Clericali ea de causa realit. degradaverit, ipsumque Will. Foro Seculari relinquendum esse decreverit, & realiter reliquit, juxta Leges & Canonicas Sanctiones editas in hac parte, ac Sancta Mat. Ecclesia non habet ulterius quid fac. in præmissis: nos igitur, zelator Justitiæ & Fidei catholicæ cultor, volentes Ecclesiam Sanctam ac jura & libertates ejusdem manutenere & defendere, & hujusmodi Hereses & Errores de Regno nostro Angliæ (quant. in nobis est) radicatus extirpari, ac Hereticos sic convictos animadversione condigna punire; attendentesque hujusmodi Hereticos in forma præd. convictos, & damnatos juxta Legem divinam & humanam canonica institutione, & in hac parte consuetudinari, ignis incendio comburi debere; vobis distinctius quo possimus præcipimus, firmiter injungentes, quod præf. Will', in custodia vestra existent', in aliquo loco publico & aperto infra Libertat. Civitatis præd. causa præmissa cor. populo public. igni commit', ac ipsum in eod. igne realit. comburi fac', in hujus criminis detestationem, aliorumque Christianorum exemplum manifestum: & hoc sub periculo incumbente nullatenus omitatis. Teste, &c.

And by that Writ it appeareth, that a man ought to be convicted of the Heresie by the Arch-bishop and all the Clergy of that Province, and abjured for the same, and afterwards anew convicted and condemned by the Clergy of the same Province, and that in their General Council of Convocation. But now by the Statute of Hen. 4. cap. 15. it is enacted, That every Bishop in his Diocess may convict a man of Heresie, and abjure him, &c. and afterwards convict him anew thereof, and condemn him, and warn the Sheriff or other Officer to apprehend him, and burn him, &c. And that the Sheriff or other Officer ought to do the same by the precept of the Bishop, and without any Writ from the King to do the same. And that is the cause (as it seemeth) that that Writ is not put in the new Registers, because that Writ ought not at this day to be sued forth, but is as it were void by reason of the said Act.

But now by the Statute made Anno 25 H. 8. cap. 14. that Statute which was made Anno 2 H. 4. is repealed and made void. And now it is enacted by this late Statute, That he who is abjured for Heresie, and afterwards falleth into Relapse, and is convicted thereof before the Ordinary, that yet the Ordinary ought not for to commit him to the Lay-power to be burnt, without the King's Writ first obtained for to burn him, as appeareth by the said Statute of 25 H. 8. cap. 14. more at large.

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*Writ upon the Statute of Marlebridge for a Fine
for Non fair pleading.*

THe Writ upon the Statute of Marlebridge for not fair A
pleading lieth, where the Sheriff or other Bailly in his
Court will take a Fine of the party, Plaintiff or Defendant,
because he did not plead fairly, &c. and the Writ shall be
directed to the Sheriff himself, or Bailiff, or him who will
demand such Fine; and it is a Prohibition to him, comman-
ding him that he do not demand such Fine; and it may be
sued by the whole Hundred, or by all the County together,
where he will require such manner of Fine of them. And
the Writ is such:

*Rex Vic', &c. Cum de communi consilio, &c. provis. sit. quod B
nec in itineribus Justic'. nec in Com', Hundred', vel in Curia
Baronis de cetero ab aliquibus capiantur Fines pro pulchre placi-
tand', neque per sic quod non occasionent': Tibi precipim', quod
ab W. hujusmodi Finem de cetero non exigas, vel exigi facias,
contra form. provisionis præd'. & distinctionem, si quam, &c.*

And for the Hundred the Writ shall be such: *Tibi præci-
mus, quod a communitate Hundredi de I. hujusmodi Finem de
cetero non exigat, vel exigi facias, contra form', &c.*

And by the Rule in the Register it may be against every C
other man who will distrain for such Fine, and he may have
an *Alias*, and an *Pluries*, and at Attachment upon the same:
and if after the first Writ of Prohibition delivered he di-
strain for such Fine, then the party who is distrained may
sue forth an Attachment against the Sheriff or Bailiff, or him
who distraineth him; and the form of the *Attachment* is such:

*Rex Coronatoribus suis in Com. Linc. salutem. Si A. fecerit, &c.
tunc ponite, &c. B. Vic. nostrum, vel Vic. nostrum Com. prædict',
quod sit cor. Justic. nostris, &c. ostens. quare cum de communi
consilio, &c. [usque ibi, ab aliquibus non capiantur Fines pro
pulchre placitand', neque per sic quod non occasionent',] idem
Vic', vel idem B. distrinxit præf. A. pro hujusmodi Fine præstand.
in Com. præd', contra form. provision. præd', ac contra prohibic.
nostram. Et habeas ibi, &c. & Averia ipsius A. ea occasione
capta interim deliberari fac'. Teste, &c.*

But note, that he may sue forth that Writ of Attach-
ment against the Sheriff, or other, although that he never
sueth forth any Writ of Prohibition before directed to the
Sheriff, or Bailiff, but then he ought for to be distrained
for

for that Fine; for the Statute in it self is a Prohibition to the Sheriff, and to all others, that they do not distrain for such Fine for fair pleading; but if the Sheriff, or other, demand such Fine, and doth not distrain for the same, then he cannot have a Writ of Attachment for such demand made, because he is not damnified by the demand, &c.

Attachment upon a Prohibition Br. 13. Vid. 9. H. 6. 61. & 19. H. 6. 54. Ascue.

Grants made by the King expressed and contained in the Register, to be remembred.

D **R**EX Ballivis & probis hominibus Ville de P. salutem. Sciatis quod de gracia nostra speciali concessimus vobis in auxil. Villa pred. parviand, quod a die consecutionis presentiam, usque ad finem quinque annorum proxim. sequent. plenarie complendorum, capiat in eadem Villa Consuetudines subscriptas; viz. de quolibet Sunnag, &c. Et ideo vobis mandamus, quod Cons. predict. usque ad finem termini predict. capiat, ut predict. est; completo autem termino dictor. quinque annor, dicta Cons. peritus cessent & deleant. In cuius, &c.

Grant of a Stewardship.

E **R**EX, &c. Sciatis quod concessimus dilecto & fideli nostro W. de H. officium & regimen Seneschalcie, &c. cum omnibus ad dictum officium pertin, quamdiu nobis placuerit: Et ideo vobis mandamus, quod eid. W. in omnibus tanquam Seneschall. pareat, respondatis, & fideliter intendatis. In cuius, &c.

Grants of Letters Patents.

F **S**EE in the Register notable forms of Grants of Letters Patents made by the King in divers manners, especially amongst the Writs of *Ad quod dampnum*, and also after the Writs de *Corrodio habendo*. And there is a Patent made, *De custodia Forestae Regis*, in recompensationem certa summae, alicui per Regem ad vitam suam concessam.

And other Patents there made upon Indentures between the King and others, upon a borrowing of Money by the King, by which Patents the King doth grant to hold and keep Covenant, &c.

The Grant of the King of the first Benefice which shall happen void is such:

Rex

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Rex Cancellario suo qui nunc est, vel qui pro tempore fuerit, vel Custodi magni Sigilli, salutem. Promotionem dilecti Clerici nostri A. preteatu boni servicij sui tam Dom. Edwardo quondam Regi Angli, avo nostro, quam nobis impensi, cordis affectantes, ac volentes ipsum a premissa consideratione favore prosequi gratioso, volumus quod idem A. ad primum Beneficium Ecclesiasticum, taxationem viginti marcarum excedentes, vacaturum, quod ad Presentac. nostram pertinuerit, & quod duxerit acceptand', presentetur. Et ideo vobis mandamus, quod eidem A. Literas nostras de Presentac. ad primum Beneficium Ecclesiasticum vacaturum, quod ad nos sic pertinuerit, & quod duxerit acceptand', sub pred. magno Sigillo nostro in forma pred. habere faciat in cujus, &c. Teste, &c.

But such Grants are not in use at this day.

A Grant of the King to one of his Chaplains of a yearly Pension out of the Exchequer, until he be promoted unto a Benefice, is thus:

Rex omnibus ad quos, &c. salutem. Attendunt. grata & laudabilia obsequia quae dilectus Clericus noster A. nobis ante haec tempora gratant. exhibuit, super quibus tam per dilectum & fidem nostrum W. quam alios fideles nostros, sumus certitudinaliter informati, sperantesque; quod in nostris agend. sua affect. & benevolentia puritate continuabit successivis actibus in futur', ac volentes ipsum munere prosequi gratioso; concessimus ei quandam annuam Pensionem xx. marcarum percipiend. singulis annis ad Scaccor. nostrum ad Festa Paschae & S. Mich. per equales portiones quousque ei per nos fuerit provisum infra regnum Angli de Beneficio Ecclesiastico quod duxerit acceptand'. In cujus, &c. Teste, &c.

There is another Grant in the Register, fol. 295. made by the King to one, to give him authority to reconcile the King's Enemies who have left their Obedience, and adhered unto other the King's Enemies, &c. and to grant pardon to them; and the Grant is such:

Rex universis & singulis, &c. ad quos, &c. salutem. Sciatis quod nos de fidelitate probata & circumspectione provida dilecti & fidelis nostri Antonij Lucy plenarie confidentes, dedimus eidem Antonio plen. tenor. present. potestatem nomine nostro recipiend. ad fidem & pacem nostram homines de partibus de Galloway in Scotia, ad fidem & pacem nostram non existent', & alios qui eisdem Scotis contra nos adherent, seu adhaeserunt, & cum eis contra nos de inimicitia nostra fuer', & qui ad fidem & pacem nostram venire voluer', & quos ad fidem & pacem huiusmodi for. viderit admittend'; & Literas de Pardonatione dictarum adhesionis & inimicitiae, necnon de huiusmodi admissione ad pacem

pacem nostram, eisdem hominibus pro securitate sua in hac parte nomine nostro faciend' ; ratum & gratum habetur. quicquid idem Anton. fecerit nom. nostro in præmiss'. In ejus, &c. Teste, &c.

C There is another Grant made unto one of the Custody of a Castle, and the Ammunition therein, for what time it shall please the King, and a Writ thereupon directed to him who had the Custody thereof before, to deliver to him the Castle, and the Implements and things appertaining to the same.

And you may see there the Patents made to Sheriffs to be Sheriffs of the Counties, and also the Patents made to the Escheators of the Counties, and also the Writs to the old Sheriffs and Escheators to deliver unto them the Rolls and Writs, &c.

D And Letters Patents of Attendants unto Archbishops, Abbats, and all others, to be Attendants unto them in those things which do appertain to their Office. The form of Nomination to be made by the King to any Abbey or other person. Of one to be Vicar, and that the Abbat do present him over to the Ordinary. And also the form of Revocation made by the King of that Nomination. And also the form of the Writ which the King sends to the Ordinary to admit of that Revocation, and to admit another person by another Nomination. All these appear in the Register, fol. 302.

And divers other Presentations made by the King, and also Revocations of his Presentation ; and also Nominations made by the King in his own right, or in the right of others, are there in the Register : and Grants made by the King of Donatives, and the Writs directed unto the Sheriffs to put them in possession : and Writs there to the Ordinary, to assign unto a Prebendary *Stall in choro, & locum in capitulo*, who hath the Prebend by the King's Collation : and divers Ratifications there made by the King to divers Incumbents of Churches, or Prebends, which they have in possession as Incumbents, &c.

And many forms of Writs made to Abbats or Bishops, to have yearly Pensions for his Chaplains, until they are promoted to Benefices : and the Writ to the Chancellor, to present in the King's name such a one, the King's Chaplain, to the first Avoidance of any Benefice which shall be void, which appertains to the King : and also Grants by the King to receive a yearly Pension out of the Exchequer.

And

Grants of Letters Patents.

And divers forms of Writs of Proxy are in the Register, E
to sue, defend or answer, &c. or to resign a Benefice, &c.

And the form of the Resignation, &c. and the form to F
make Protestation when a man will resign his Benefice, &c.
appear in the end of the Register, in fol. 302. and in other
Folio's there following.

*And so endeth this present Treatise, called, New
Natura Brevium, which Book fully declares the
Natures of the Original Writs contained and ex-
pressed in the Register.*

FINIS.

*E. J. H.
4/12/11*
